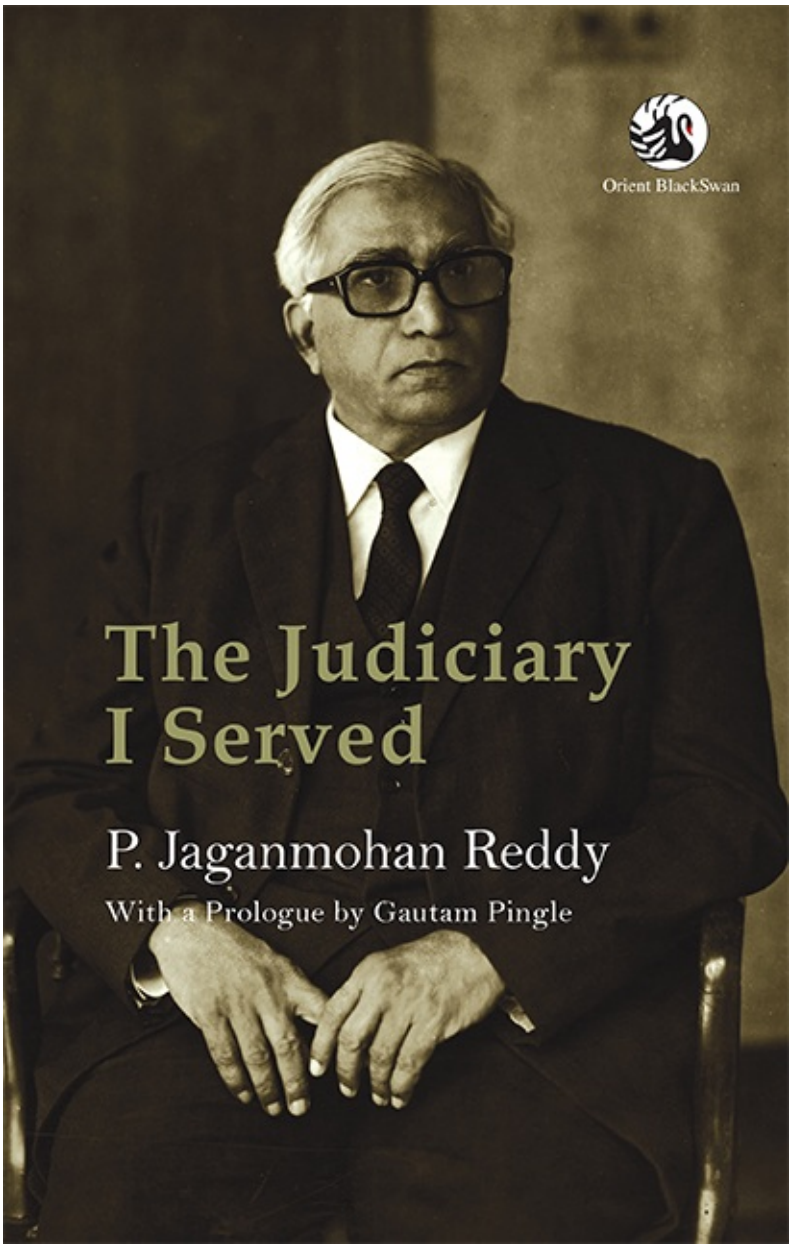
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The Judiciary I Served
P. Jaganmohan Reddy
With a Prologue by Gautam Pingle

The Judiciary I Served

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The Judiciary I Served

P. JAGANMOHAN REDDY

with a Prologue by
Gautam Pingle

Orient BlackSwan

THE JUDICIARY I SERVED

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Contents

Cover

Title Page

Prologue to this Edition by GAUTAM PINGLE

Foreword to the First Edition by B.S. MURTY

Preface to the First Edition

PART I

1 Becoming a Lawyer

2 Judicial Service

3 Divisional and Sessions Judge

4 Elevation to the High Court

PART II

5 As a Judge of the High Court

6 Some Problems of Administration

7 Two Chief Justices

PART III

8 Andhra Pradesh High Court

9 Chandra Reddy, Chief Justice

10 chief Justice Chandra Reddy’s Transfer

11 Appointment as Chief Justice

12 After Becoming Chief Justice

13 Chief Justiceship: problems and Incidents

14 To the Supreme Court

15 Communal Riots: Chairman, Commissions of Enquiry

Part IV

16 The Bank Nationalisation Case

17 The Comrrunal Riots Enquiry

18 Challengps to the Constitution

19 The Keshavananda Bharati Case

20 End of fudicial Tenure

Appendix Youthosophy—Yorkshire's Most Youttrftrl Pilot

Prologue

Pingle Jaganmohan Reddy (1910–99) lived a long life that spanned significant events in the history of modem India. He was born and raised m Hyderabad, the largest and richest of the princely states in the country. From 1713 to 1950, the ruling dynasty had been Muslim but it had rested, along with a class of Muslim *jagirdars*, on a political and economic structure maintained by Hindu jagirdars, *samasthans*, *deshmukhs* and *desais*.

Jaganmohan Reddy himself was the descendant of a family who ad been hereditary deshmukhs and *sirdeshmukhs* under the izams. The desmukhs were responsible for collection of revenue in their areas and required to remit the same to the state. Even after direct collection by the state was introduced in the late nineteenth century, the deshmukhs were given due consideration and allocated compensation on a yearly basis. Together with other elements in the feudal structure, they had dominated the state and supported the dynasty.

The author grew up in a kingdom that was in the process of a gradual change as representative institutions slowly succeeded in establishing a separation of powers between an independent judiciary and the executive. During the early years of his life, the space for political activity had been limited but the pressure for change had been in the air.

He clearly saw the direction in which society and polity were traversing. His own family had already made the transition from serving the Nizams to business, industrial, professional and political occupations. The author’s father, Pingle Venkatrama Reddy, was the sirdeshmukh of Warangal. Forced at an early age, by the deaths of his father and uncle, to take on the responsibilities of his family, he ventured out into business and industry. In this effort, he succeeded spectacularly, expanding his operations not only in Hyderabad State but also to Bombay, Bangalore and Gujarat. Venkatrama Reddy sent his youngest brother to

Trinity College, Dublin to be educated as a lawyer. He followed up by sending his three sons and two nephews to Europe—the eldest son went to Germany and the younger two sons and nephews to England—for their education. He entered the political scene by getting elected to the new legislature of Hyderabad State under the Nizam. He was Deputy Prime Minister during the critical and eventful phase of British withdrawal, the consequent Partition and the annexation of Hyderabad to the Dominion of India.

The author went to school in Leeds. After his first degree, he got married. His wife, Pramila, also followed him and studied in the Perse School for Girls in Cambridge, while he completed his Law Tripos at Cambridge University. He was called to the English Bar from Gray's Inn. Much of his early life is described in his autobiography *Down Memory Lane: The Revolutions I Have Lived Through.*

For the first few years, Jaganmohan Reddy practised law in England and later returned to India. He set up practice, first, in the British Presidencies of Bombay and Madras and then in princely India. In the Nizam's Hyderabad, he not only practised law in Urdu, the state's official language, but also drafted laws in the same language. By *a firman* (order) of the Nizam, he was elevated at an young age of 35 to the High Court of Hyderabad which had been created in 1920 by the Nizam. He, as was usual at that time, wrote his judgments in Urdu.

After the annexation of Hyderabad to the Dominion of India, he was once again elevated to the High Court of Hyderabad when it was reconstituted under the Republic of India, under the warrant of the President of India. Later, when Hyderabad State was trifurcated and the Telangana region was merged with Andhra State, he was absorbed by the High Court of Andhra Pradesh and later became its Chief Justice. In due course, he was elevated to the Supreme Court of India.

He faced many trials and tribulations with an equanimity characteristic of him. He believed that justice, both for himself as for others, would eventually prevail whatever be the delay. And while he himself awaited justice, his duty was to stoically continue to function without recrimination and without feeling victimised. Unusually for a judge, he was involved for nearly 20 years as the Administrative Judge in maintaining the administrative system that was necessary to deliver justice. Thus, he combined his judicial function with an administrative one and gathered insight into the processes of the judicial system

while helping to ensure its efficiency, efficacy and integrity.

He retired from the Supreme Court in 1975 and took up Vice Chancellorship of Osmania University in Hyderabad. His book *The University I Served* describes his experiences as a Vice Chancellor in trying to revive the university. Apart from these two books, he has published extensively on law and legal matters. This present book, however, is his memoir as a judge of the High Court and the Supreme Court of India.

He writes of the many facets of his experiences in a most sober and sensitive fashion. The reader, especially if he is acquainted with the times and with the persons described, will note how he avoids naming persons wherever there is a negative connotation to the narrative. Readers will also note how he mentions the small beginnings of several problems we face today with a greater frequency and intensity and are yet unsolved in the administration of justice today. Reading the memoir one cannot but help coming to the conclusion that his was a relatively uncomplicated age and a decidedly unburdened system of justice administered with grace and trust on all sides. The few incidents of irregularity, unfairness and inequity that one can read in the narrative indicate the beginning of a long decline but the author himself manifests a confidence in the ability of men of good character in positions of power to counter this malaise.

The subsequent erosion of standards of behaviour and their acceptance by the polity and society is something he could not have possibly envisaged. The causes of the decline in the efficacy, efficiency and integrity of the judicial system can be discovered from the emphasis he places on character, merit and goodwill of those who staff the system and in the restraint that need to be exercised by politicians who can make and break it. The symptoms of the decay were visible even then, but one gets the impression that he considered these as aberrations rather than fundamental issues that would destroy the system he had done his utmost to maintain and cherish.

This narrative indicates the fine fissures and incipient deviations that heralded the future course that he must have both seen and feared. His fears of how the system could cope with the increasing pressures and contradictions are hinted at. But the declining standards of character, capacity and behaviour of the personnel staffing the system were beginning to show up.

It seems clear that the author saw himself as someone working hard and yet saw scope in continuing to learn throughout his career. It is evident that a judge’s job

requires application of mind all the time. In this he is guided by a written Constitution and a set of time tested laws and precedents. Yet, their interpretation and application to a specific situation and time is where judgment comes in. In coming to conclusions that are not only legally justifiable but also which will stand the test of fairness and equity is a challenge the author tried most to meet. Though the author never speaks of it, he was as it were, born and trained to hold an office of the state. To this end he believed that he was part of the state system and it was his task to defend and maintain the state and its objectives against those who wilfully or otherwise act against it and its laws. At the same time, he saw that the state could not maintain its legitimacy if it did not meet the aspiration of the people in fundamental aspects. From this, together with other fundamental rights, he saw the idea of equality pervading and sustaining all other rights of the citizen.

In 1969, he was appointed Chairman of a three-man Commission to investigate and report on the communal riots in Gujarat. He was not too happy as he had just been appointed to the Supreme Court and wanted to be part of the judicial process there but had been prevailed upon by the Chief Justice who thought his experience of working in a multi-community culture of Hyderabad was ideal for the assignment. Of his two colleagues, Justice Vakil was a Parsi and Justice Sarela was a Muslim. In the most difficult of times and in a charged atmosphere, he managed to submit a unanimous report setting out all the details and events with clarity and accuracy.

In 1973, he was one of the 13 judges of the Supreme Court hearing the famous *Keshavananda Bharati* case. This case is considered by all to have been decisive in protecting the basic structure of the Constitution from being amended by Parliament. The Government was headed by Indira Gandhi and the Congress and was soon to embark on the Emergency of 1975–77.

The 13 judges had heard the arguments and had decided the case under difficult circumstances. The author describes some of the atmosphere and one has to read between the lines to sense the intense stresses of that process. He himself had listened diligently to the eminent advocates. He was quiet compared to his ‘brother judges’ who were loquacious and almost adversarial—mostly towards the advocates, some even to their brother judges. It was clear to observers and to his brother judges that he had not made up his mind till all the arguments had been heard. He joined the majority of seven against six judges in deciding that the amending power of Parliament was limited and it could not amend or destroy

the basic structure of the Constitution. But he formulated his own judgment by an approach that is considered by legal experts as clear, organised, straight-forward and conforming to the essence of the Constitution and its meaning and purpose for the people of this country.

First, he stated the issue as he saw it clearly. On the critical issue he wrote, 'The validity the Twenty-Fourth Amendment would depend on the interpretation of two crucial articles, Article 13 and Article 368 and two words, one in each article, namely "law" in the former and "amendment" in the latter.' This took him through half of his 100-page judgment.

When it came to the crux of the matter he was clear. He used Lord Acton's memorable phrase and said:' … the recognition of the truism that "power corrupts and absolute power corrupts absolutely" has been the wisdom that made practical men of experience in not only drawing up a written Constitution limiting powers of the legislative organs but in *securing* to all citizens certain basic rights against the State. If faith in their rulers is so great and faith in the people to curb excessive exercise of power or abuse of it so potent, then one needs no elaborate Constitution because all that was required is to make Parliament omni-potent and omni-sovereign' (his emphasis).

In identifying the critical Fundamental Rights without which he thought we would not have a Democratic Republic, he was absolutely forthright. Of the attempt to exclude from operation Article 14 which guaranteed equality before the law, he wrote, 'The only purpose that the exclusion of Article 14 will serve would be to facilitate arbitrariness, inequality in distribution or to enable the conferment of patronage, etc.' He felt that while this Article was decisive for the preservation of the Democratic Republic, its exclusion by the contested legislation was not even necessary to achieve its intended purposes.

The other Fundamental Right he defended was that of Article 19—which related to freedom of expression and speech, etc. He believed it was closely related to Article 14. But instead of taking either extreme position of full agreement or total rejection, he thought that the contested legislation could be saved by deleting the reference to Articles 14 and 19. But he realised he was alone in a sharply divided Bench,' … happily, even if I am alone in this view, the portions indicated by me are severable, leaving the unsevered portion operative and effective so as to enable laws made under Article 31C to further the Directives of State Policy enshrined in Article 39 (b) and (c).'

He concurred with the majority that the attempted exclusion of the jurisdiction of the courts from examining the laws framed under the contested amendment was beyond the powers of Parliament.

With this, the majority managed to stop the slide towards unconstitutionality in the political and legislative processes. He quoted Chief Justice Hidayatullah's maxim, 'Parliament could not do indirectly, what it could not do directly.' Yet, the petitioner lost the case and the government saved its legislation at the price of allowing its laws to be justiciable. In the end it all seemed to be a case of defective ideology and poor drafting of legislation.

In helping to make changes in the society, polity and economy as smooth and painless as possible, he put the law and courts to the best use. He was essentially a simple man, with simple tastes and minimal needs, who worked hard at his job. He was a prime example of a trained mind and he continued to train and test his capacities all his life. But he dealt so ably with the complexities precisely because of his simplicity and directness. For a man of his values and likings, nothing seemed beyond understanding, no issue beyond rational analysis and no problem without a reasonable solution.

It is truly sad that India does not make men like him any longer in anything like the numbers the state desperately needs today. The outcome is indicated by the pending case before the Supreme Court alleging corruption of eight of the 16 former Chief Justices of India. The author could never have been able to imagine a day when this would have been possible. He had firmly believed that the judiciary would stand firm and defend the Constitution and thus the Republic. Reading this memoir, one feels a pity for the Republic, served so well in the past and so poorly in the present. In times like these one can only gaze at the future with mounting trepidation.

Hyderabad 2014 Gautam Pingle

Foreword

An autobiography is generally read with an interest that transcends the desire to know the personal history of the author. This is not to say that personal histories are not interesting. There is a transcending interest, however, in the historical facts which the author in his narration may bring to light, facts not so far revealed to the public. There is also the philosophical interest in knowing the higher values of life that guided the author, the enduring quality of those values, and the outcomes of the experiments in applying those values to the situations encountered. This autobiography of Shri Justice P. Jaganmohan Reddy covering the years he spent in the judiciary satisfies plentifully the reader's interest in the personal history of the author as also his historical and philosophical interests.

Autobiographies are sometimes written with the objective of explaining the events in which the author was involved in the past and to lay the blame concerning those events at another's door. This one is definitely not written in that strain. The author recalls the years he spent in the judiciary with a sense of satisfaction and achievement and with delight. He has none but a good word for everyone who became associated with him during his life in the judiciary; whether as a brother judge, a member of the lower judiciary, the administrative staff, or the Bar. In some cases he has expressed warmth and affection.

Shri Justice Jaganmohan Reddy had his collegiate and legal education at Leeds and Cambridge. At Leeds his performance was most outstanding both as a scholar and as an athlete. A professor of law at Leeds was so impressed with Shri Reddy that he secured a place at Cambridge for him to study law, because Shri Reddy expressed his preference for that University. There Shri Reddy came into close association with some eminent law professors. After his return to India, Shri Reddy learnt the art and craft of forensic legal practice in the chambers of the topmost members of the Bar at Madras and Bombay. This was the preparation he had for his career in law.

From the time he started legal practice at Hyderabad his ascent to the summit of the judgeship of the Supreme Court was steady and fast. The stepping stones were: the position of Deputy Secretary, Government of H.E.H. the Nizam, specially in charge of drafting taxation laws in Urdu, Divisional Judge (in charge of four districts), Judge of the High Court of Hyderabad before and after the Police Action in 1948, Judge of the High Court of Andhra Pradesh, and Chief Justice, High Court of Andhra Pradesh. The offer of the judgeship of the Supreme Court came to him rather as a surprise while he was on a private visit to the United States.

While a judge of the Supreme Court, his relations with his brother judges were always warm and friendly. Differences of opinion on the issues that came up for adjudication, and expression of such differences in 'separate opinions', did not disturb the cordiality. His relations with brother judges were also friendly when he was in the High Court, as a Judge and Chief Justice. He recalls his participation in some celebrated cases but this is done more to express his memories of participation rather than as an exercise in appraisal of his contribution to legal decision-making. That task has been left to those to whom it belongs, principally academic scholars.

A number of factors may have played an influential role in shaping the author's personality and enabling him to handle with ease and distinction the several assignments of a highly specialised and intricate character that came to him. While a student in the British universities, during the years when a youth gets prepared for later adult life, he may have learnt from British culture the values of drive and application to the task of governance, and tolerance towards the opposing point of view, balanced by rigorous adherence to one's own fundamental preferences. His roots in Hindu culture remained unshaken all the time, and he acquired the refined aspects of that culture as he was born and bred in one of the leading families in the old Hyderabad State. His understanding of and respect for Islamic culture, in close association with which he spent his boyhood and later adult life, remained as fresh as ever all through. Whatever may have been the underlying influence, he always saw things as they were at a particular time and did not allow personal concerns about the future to colour his present perceptions about his role as a judge or administrator.

As indicated above, an autobiography is read for what it may communicate in undertones in the narration of the experiences of the past. Laymen, law students, young lawyers preparing for a major career in forensic legal practice, and

judicial officials at different levels of the hierarchy including the topmost, will find this book highly interesting from the point of view of history, gaining knowledge of the dynamics of judicial administration and decision-making, and understanding the art of adhering to preferred fundamental values in encountering varied complex situations.

Nearly two decades ago I had the privilege of becoming personally known to Shri Justice Jaganmohan Reddy. Then Vice Chancellor of Osmania University, he visited Andhra University to deliver the Shri Alladi Krishnaswamy Iyer Endowment Lectures. He gave three lectures which drew large audiences and were highly admired. It was the time of Smt Indira Gandhi's Internal Emergency and the burden of the song of politicians in power was: 'If only the judiciary had not stood in the way upholding property rights, poverty would, have been long banished'. Shri Justice Reddy refuted this charge and did so quite effectively. The University decided to publish these lectures. I was then in Andhra University and the lectures were entrusted to me to be seen through the press. In that connection Shri Justice Reddy and I exchanged some letters. After finalisation, the script was sent to the District Magistrate for his clearance for publication as required by the Emergency regime. The District Magistrate withheld clearance for several months. Meanwhile I had to leave for Law School to complete my then half-completed book on the international law of diplomacy. After my return, when we happened to meet, he was preparing the Sir Asutosh Mukherjee Endowment Lectures on Liberty, Equality, Property and the Constitution. He gave them to me to read. I always enjoyed reading his lectures which were eloquent and lively on whatever subject they might be, and bore a mark of freshness in approach. And he welcomed my comments. After my retirement from Andhra University in 1981, I took up an assignment as professor and Dean of Law in Osmania University for a couple of years. During those years we met quite often. Our mutual visits were so frequent that the gracious lady, Smt Jaganmohan Reddy and my wife also became good friends. In 1983 I moved back to Visakhapatnam but our contacts continued. In 1997, when I called on him he gave me the manuscript of this book to read. After I completed reading it, he rather surprised me by asking me to write a foreword for the book. I am quite confident about the accuracy of my prognosis regarding the book.

B. S. Murty

Preface

Nearly two-thirds of these memoirs were ready in 1996, but owing to my illness I could not complete them earlier. These memoirs have a close connection with my autobiography, *The Revolutions I Have Lived Through*, which ends with my becoming a judge of the High Court of Hyderabad under the Constitution. It was the first appointment by a warrant signed and issued by the President of India, Dr Rajendra Prasad. These memoirs are a continuation of the autobiography, though Part I, consisting of Chapters I to IV, recalls some of the events in that biography. Part II, comprising Chapters V to VII, take the narrative up to the end of the my tenure as a judge of the Hyderabad High Court in October 1956. From 1 November 1956, consequent on the nine districts of the Hyderabad State being merged with the areas of Andhra State, the new state of Andhra Pradesh was brought into existence, with its High Court being located at Hyderabad under the States' Reorganization Act. Part III, consisting of Chapters VIII to XV, is the narration of my tenure as a judge of the Andhra Pradesh High Court; my appointment as its Chief Justice in July 1966 and my elevation as a judge of the Supreme Court on 1 August 1969. Thereafter Part IV deals with my days as a judge of the Supreme Court, with my appointment soon after, as Chairman of the enquiry commission into the communal riots m Ahmedabad and other places in Gujarat in September 1969, and continues till my retirement on 23 January 1975. It also states that on that same day I was offered the post of Vice Chancellor of Osmania University, which I accepted and took over the next day, i.e., 24 January 1975. The narration regarding my activities as a Vice Chancellor are contained in the book *The University I Served* printed and published by the Osmania University Press. In the preparation of this autobiography I received great assistance from Sham Rao Hamur, retired Head of the Press Trust of India, who went through the entire narration from Chapter I to Chapter XIX and helped me greatly with the book in its present form. As he was away m the USA for a long period visiting his daughter he was not available to help me with the

concluding chapter. I had the good fortune of being assisted by Professor B. S. Murty, a distinguished Senior Fellow of Yale University, erstwhile Professor of Law and Dean of Law of Andhra University, and Professor of Osmania University. When I was invited in December 1975 to deliver the first Shri Alladi Krishnaswami Iyer lectures constituted by the Andhra University Professor Murty was of great help. I chose the subject ‘Social Justice and the Constitution’ and delivered those lectures which were presided over by Shri Alladi’s son, Justice Alladi Kuppuswami.

Professor Murty not only went through all the chapters in this autobiography and discussed them with me from all aspects but has been good enough to contribute a foreword to this book. I am extremely grateful to him. I am also thankful to the stenographer, Shri R Om Prakash of the Institute of Public Enterprise, my new assistant, Shri S. Srinivas Reddy, and my earlier one Shri P. Sreenivasa Rao who has by his dedication and hard work risen to the position of the Superintendent in the Institute of Public Enterprise. Even during the last year when Om Prakash was not available Sreenivasa Rao assisted me. To all these who have helped and assisted me in bringing out this book I offer my thanks. I also thank the Institute of Public Enterprise for affording me its secretarial and computerising help and to Ms Adarkar of Orient Longman for patiently waiting for the completion of the draft and for assisting in its publication.

Hyderabad P. Jaganmohan Reddy

PART I

1

Becoming a Lawyer

I have debated with myself for quite some time whether I should include in this book a narration of the factors which impelled me to become a lawyer, my apprenticeship, my being called to the Bar, and my practice as a lawyer in Bombay, Madras and Hyderabad before being elevated as a judge of the High Court of Hyderabad. In other words, can my activities as a lawyer prior to becoming a judge be considered to be a service to the judiciary, and should these also be included in the narrative of my activities as a Judge, Chief Justice and a judge of the Supreme Court?

I have no doubt in my mind that practice at the Baris equally a service to the judiciary. Lawyers are undoubtedly officers of the Court in the same way as judges are the presiding officers of the Court. The only hesitation I had is that since in my autobiography, *The Revolutions I Have Lived Through,* which ended with my elevation as a judge of the Hyderabad High Court under the Constitution of India in February 1952, I had given a detailed narrative of all my activities from the time I decided to take up the profession to the time I became a judge, should I repeat that again in this book? If I did so I would make this book bulky, so I could leave it to those who are interested, to read a detailed account of these activities in that earlier book, and start my narration in this book from where I left off. But it would not be inappropriate here to include at least a quick round-up of Part III of the book referred to above. Thereafter I propose to continue my narration about my activities—my being invited by the Government of His Exalted Highness the Nizam of Hyderabad to accept the post of the Chief Draftsman of the government, my acceptance of the post of Divisional and

Sessions Judge which includes my elevation as an Additional Judge of the Hyderabad High Court in 1948 in the vacancy of a permanent judge serving in another equivalent post, my reversion after the Police Action when the permanent judge returned to his post, my posting as a Divisional and Sessions Judge, Secunderabad, and my functioning as such. All this and the subsequent narration covers my activities during a period of over a quarter of a century.

From my early years I always resented injustice and fought against it, but since I used to hear a good deal about lawyers being liars, I was greatly prejudiced against the profession of law. However, I had a great attraction towards medicine and surgery, and in this I was influenced by Dr B. S. Raj, a leading surgeon, and Dr Vasant Rao, a leading physician, both serving in the Hyderabad army. (They also happened to be our family surgeon and physician. I was operated on by Dr B. S. Raj and was under the treatment of Dr Vasant Rao. Somehow after I went to England for studies I was dissuaded from studying medicine as that would take a long time. My mother, who was distressed by the death of my eldest brother in a boxing match in Berlin just before he was to return home, was not in favour of my being away for the long period which a study of medicine would entail. I therefore took the B.Com Degree course and wanted to get into business. But while pursuing the course I was exposed to commercial law and constitutional law and began to like these subjects. I also used to attend the Assize Courts presided over by His Majesty's judges trying criminal and civil cases and began to admire the manner in which British justice was administered. When I came for a vacation to India in 1931 I heard two eminent lawyers argue a succession case in Hyderabad between my brother-in-law and his nephew Raja Rameshwar Rao. Sir Tej Bahadur Sapru appeared for Rameshwar and Shri R. S. Naik, who later became judge and Chief Justice of the Hyderabad High Court, for my brother-in-law. I was greatly impressed by these eminent lawyers.

I had also met at Leeds Mr Mohammed Ali Jinnah who had come to attend the Round Table Conference. He visited Leeds when I was the President of the Indian Association. I was impressed by his achievements as a lawyer and his sage advice to me. He said: 'Reddy, when you are in physical pain, with a headache, a stomachache or any other pain, you would readily take any medicine given to you, even by a student of medicine, without bothering whether your life might be in danger. But when you are in material or mental trouble or your freedom or your property is involved you want the best lawyer, so good that if you have to mortgage your wife's last jewelery to engage him, you would do so.

If you want to be a lawyer you should be one like that.' Another piece of advice he gave me was this: 'After you become a lawyer and are practising, you should have a place where you can be found by those who require your help. Even if you have no work you should be found at that place or a message should be left about where you could be found. If you have no work to attend to on any day, you should nonetheless be at the place and keep yourself busy, keep yourself up-to-date with law, or read a novel, a newspaper, a magazine or any booklet. But you must be there.' I was greatly impressed and thankful for his concern for me. At that time he had not taken an adverse stand against the unity of India.

While I was getting inclined towards the profession of law, what ultimately decided me was the intervention of Professor Hughes, Professor of Law who helped me join Trinity Hall, Cambridge, to study for the Law Tripos (an Honours degree in Law). One day, Professor Hughes called me after class and said, 'Reddy, what are you doing at a provincial university? You should be at one of the two big universities.' I said the reason why I did not apply for admission was that an application for admission would be referred to India Office, and they generally had their own prejudices. He said, 'Don't bother about it. Which university do you want to go to?' I said, 'Cambridge'. Since he was from Oxford, he asked, 'Why Cambridge?' I told him that from my school days I had been brought up on Cambridge exams and so I said "Cambridge'. Then he asked me, 'Which college?' I said,'I don't know'. He decided on Trinity Hall as the best college for law. Within three weeks I got a call from the senior tutor of Trinity Hall inviting me for an interview; after the interview I was admitted. I was surprised at Professor Hughes 'interest in me. It appeared that my extracurricular and sports activities at Leeds, which were quite often reported in the press, made him take an interest in me and he thought I would make a better impression at one of the big universities. I was the youngest pilot in England; I had been winning the pole vault item in the university and had even been on the British universities' team and was awarded the colours of Universities Athletic Union (UAU). There were write-ups about me, one of which is given in the Appendix. It is an article dated 6–4–1933 in the *Yorkshire Evening Post* which shows a photograph of me in a flying kit under the title "YOUTHOSOPHY' with the heading 'Yorkshire's Most Youthful Pilot'.

Once I made up my mind to become a lawyer and joined Cambridge University, I never looked back or regretted taking law. At every stage I was lucky to have the help of some distinguished person such as Professor Guttridge, Professor of

Comparative Law, Sir Walter Monckton, K. C., who was counsel for the Hyderabad state, Mr P. B. Morle, a leading Counsel and an authority on drafting pleadings and other legal instruments, under whom I served as an apprentice after I was called to the Bar.

I had the opportunity of appearing with my seniors before eminent judges in the King's Bench, Chancery, Court of Appeals, the House of Lords and the Privy Council. I was also lucky to have three persons who influenced me greatly and to whom I am particularly grateful. One of these was Sir Shadi Lai, former Chief Justice of Punjab and a member of the Privy Council. He showed great affection towards me. His son, Narender and I were good friends and were members of the same Inn of Court — the Grays Inn, of which Sir Shadi Lai was a Bencher and Lord Atkin was the Head. Sir Shadi Lal sometimes used to show me his draft opinion and ask me to read it. After I read it he would enquire whether I understood it. When I said 'yes', he would ask me what I had understood. After hearing me, he said that judgments or opinions must be written in language simple enough to be understood even by clients. He also said, "Reddy, as a junior you must make yourself indispensable by thorough preparation of the case, so much so that if your senior should drop dead while arguing, you should be able to carry on from where he ended'.

The second person to whom I was grateful was Sir Walter Monckton, K. C. for arranging for me to read in the Chambers of Mr P. B. Morle. Mr Morle always emphasised that before you look at the law you should get your facts correct, analyse the evidence and determine what you can establish and what you cannot. Then you should investigate and study the law applicable both in favour of and against the set of facts you are trying to establish.

The third person was Mr Campbell, a retired judge of the Punjab High Court and a lecturer in Hindu and Muslim Law at Cambridge. He introduced me to the Chief Justice of Bombay, Sir John Beaumont. I have referred to them in detail in my book *The Revolutions I Have Lived Through.*

Sir John Beaumont helped me to get into the Chambers of a renowned advocate of Bombay, Sir Jamshedji Kanga. I was fortunate to have been a junior under him as I had the opportunity to become familiar with the Indian judicial system. I began to learn the art of advocacy not only from him but from other distinguished lawyers like Sir Chimanlal Setalvad, his son Motilal Setalvad, who became the Advocate General of Bombay, Coltman, D. Bahadurji, Bhulabhai

Desai, Kanhaiya Lal Munshi, Sir Kenneth Kemp, Advocate General of Bombay, and others whose performance in Court as advocates inspired me. It was in Bombay that I appeared in my first case on behalf of the King Emperor before Justice Nusserwanji Engineer, presiding over the High Court of Sessions. I successfully prosecuted a habitual criminal in what was a jury case. In India the jury consisted of nine persons, unlike the Anglo-American system where it has to consist of twelve members.

After about a year I shifted my practice to Madras where I worked as a Junior in the office of S. Doraiswami Iyer, a distinguished onginal-side lawyer. My senior had not only been a lecturer in college, teaching the law of Evidence, but was also a master of the original-side procedure, erudite in law, thorough in the preparation and presentation of a case. It was he who taught me the art of preparing a case. He was one of the several seniors to whom I owe my success at the Bar. Unfortunately I did not have the opportunity of working with him for long, as being a devotee of Shri Aurobindo Ghosh, he retired to the Aurobindo Ashram at Pondicherry.

I also learnt from him the art of cross-examination; particularly how not to ask questions which were likely to boomerang, and how to know when to stop once you have made an impression on the judge and demolished the witness. I appeared in some famous cases such as in the Wanaparthy Arbitration before Mr D'Arcy Reilly, Chief Justice of Mysore, in which S. Sreenivasa Iyengar, the renowned lawyer, editor of *Muytic's Hindu Luw* and President of the Indian National Congress appeared for my brother-in-law's nephew Raja Rameshwar Rao while Sir Alladi Krishnaswami Iyer the Advocate General of Madras along with my senior, S. Doraiswami Iyer, appeared for my brother-in-law. I also appeared in other famous cases such as the Venkatagiri case, the Punganore Zamindari case etc. in which leading seniors like S. Sreenivasa Iyengar, Shri Alladi Krishnaswami Iyer, Radhakrishnayya (a colleague of Shri Venkat Subba Rao before he became a judge) etc. appeared.

After Doraiswami Iyer retired to the Aurobindo Ashram, I set up an office in Madras with K. Rajagopal Iyengar a junior of our senior. I practised for almost three years during which I appeared in civil and criminal cases. Even before I shifted my practice to Hyderabad I had been appearing in important civil and criminal cases there. In the Jatprole Succession case I had worked with Shri N. N. Sircar, one of the most eminent lawyers from Calcutta, who had also been a Law Member of the Viceroy's executive council. In the Golconda Cigarette

Company case I had briefed Sir B. L. Mitter and Sir Sultan Ahmed. The former was the Advocate General of India. I learnt from Shri N. N. Sircar, as I did with S. Doraiswami Iyer, the art of preparing a case with such thoroughness that the entire case would be eviscerated until there was nothing more left in it. After this preparation, the way you presented the facts of the case to the judge and tried to convince him was a matter which depended on your ability, enterprise and skills of persuasion, all of which you kept learning and improving upon as you continued in your practice. I was fortunate that at the very threshold of my career I had impressed my seniors who soon began to take an interest in me and rely on my preparation of the case both with regard to facts and law. It was about this time that Sir Akbar Hyderi, the Finance Minister and subsequently the President of the Nizam's Executive Council invited me to come over to Hyderabad where he was proposing to set up a State Bank which was both a commercial bank as well as a banker's bank.

Sir Akbar's sons, Ali, Iqbal and Mahmood, were my classmates in school. Ali was an officer in the Imperial Bank of India and was going to be taken as Secretary of the proposed new bank. In view of this, I shifted my practice to Hyderabad. I helped Mr R. S. Paton Special Officer, who was also from the Imperial Bank, in drafting the Hyderabad State Bank Bill. As all laws in the erstwhile Hyderabad State were in Urdu the Act had to be in Urdu. I had to help him in drafting the bill in Urdu and to ensure that it was in accord with Mr Paton's English draft. After he was satisfied, the bill was introduced and became law. On the bank being set up, Mr Paton became the Managing Director and Ali the Secretary. After one or two years of unofficially helping the bank as its legal adviser, I was confirmed in this position and worked on a retainer. In the event of my having to appear in any case I would be paid my fees. The Managing Director and the entire establishment were satisfied with my work. As long as I was the legal adviser I saw to it that the bank was not involved in any litigation. During the War the Government of Hyderabad established some other undertakings. It brought into being The Hyderabad Commercial Corporation which dealt with the acquisition of foodgrains and with making them available to the public. Then it started the Deccan Airways which ran a service between Hyderabad, Delhi, Bombay, Madras etc. The Hutti Gold Mines Corporation was set up to exploit gold resources. The Government sought my help in establishing these undertakings and subsequently I was appointed legal Adviser to each of them. Apart from these undertakings, I had retainerships from Raja Ram Dev Rao of Wanaparthy, the Raja Saheb of Jatprole, Raja Dhanrajgirji, and

Narsingirji and was advising the Singareni Collieries Co. Ltd. etc. I also helped in setting up several other private companies such as the Deccan Cardboard Co. Ltd.

During the Second World War 1939–45, taxation on earned income was introduced for the first time in the history of the Nizam's State of Hyderabad. Till then the government of Hyderabad had been dependent for its budget on the income from land revenue, excise, customs, postal revenues and from *peshkush* from *jagirs* etc. Attempts to introduce income tax were strongly opposed particularly by the *jagirdars* since *jagirs* were sub-states depending also on the income from land revenue from *jagir* lands. If income tax was introduced it would cut into their income and was likely to affect the administration particularly of large *jagirs* like those of Salar Jung, the Paigas, the Hindu Samasthans like Gadwal, Wanaparthy, Amerchinta, Sirnapalli etc. These *jagirs* had their own police, judiciary and revenue powers, but the appointments of officers in these departments had to be approved by the Nizam's Government. The Second World War having imposed a great strain on the resources of British India, the Central government brought in legislation to tax profits, made in business or by individuals as a result of the war, which were in excess of standard profits prescribed and ascertained under the Act. The government of Hyderabad also similarly brought in a law by promulgating an ordinance entitled the *Dasturul Atnal Zayed Munafa* (excess profit tax ordinance). Since this was the first taxation measure in the Hyderabad State, lawyers and accountants in Hyderabad were not conversant with taxation laws. Several auditors and accountants began to migrate into Hyderabad from the neighbouring areas of British India but the only snag was that these migrant auditors did not know Urdu in which the ordinance was worded. As I was specialising in commercial and taxation laws, I translated the Urdu ordinance into English and wrote a small commentary in English for the benefit of business and commercial undertakings as well as for auditors and accountants. Mir Laik Ali who was a leading businessman in Hyderabad (and later the Prime Minister of Hyderabad before the Police Action played a destructive role in the ultimate humiliation of Hyderabad) was the President of the Hyderabad Chamber of Commerce. He agreed to publish the book on behalf of the Chamber of Commerce. Although I could have earned money by having it published myself, I gave it for publication without accepting any remuneration as I thought I would thus render a service to the commercial and business community, lawyers, and auditors. As it was the only book in the state on Excess Profits Tax law, this book became popular. One

day a senior advocate and our family lawyer, Konda Venkat Ranga Reddy who later became a Minister in the Ramakrishna Rao government and Deputy Chief Minister in Sanjeeva Reddy's government, phoned me to say that he would like to come over to my office to consult me on a matter involving excess profits tax on behalf of a client of his. I was rather taken aback and told him that I would myself go over to see him, but he insisted on coming over and in fact he did. Since the provisions of the Excess Profits Act were new and were drafted in Urdu, a matter complicated by using innovative terminology, most lawyers found it difficult to understand it. After a discussion and after going through the basic postulate for determining standard profit, Shri Ranga Reddy was able to understand his client's case without difficulty. These activities of mine as a commercial lawyer induced the government to nominate me in 1943 as one of the members of the Nizam's Commission on Insurance and Company Law legislation which it wanted to introduce. The Commission also included a couple of senior lawyers, Dewan Bahadur Aravamadu Iyengar and Abdul Hassan Sayed Ali who were several decades older than me. In respect of both these proposed legislations I made certain suggestions which were accepted by the government. One of these which was particularly radical, concerned the managing agents of the companies who had no financial stake. Since the only justification for their being appointed was to persuade persons of substance to invest in the venture they were proposing, they got themselves appointed as Promoters of the Company. Under the contract entered into between themselves as Promoters of the Company, and the Company to come into existence, they were entitled to commission both on the purchases and sales made by the company. In other words they got the cream without contributing to the milk. Many companies got into financial trouble because of the activities of these managing agents whose own stake was almost nil. My suggestion was that before any person or undertaking could be qualified to be appointed as a managing agent of a company he or it should invest one-third of the paid-up capital and retain that investment as long as he or it continued to be the Managing Agent. If the investments thus held fell below one-third he or it would lose the managing agency. This proposal was radical and even the government of India did not envisage bringing about such a reform, as most of the influential managing agents of companies were British firms The Nizam's government enacted this reform in the Companies Act in 1947. It was only in 1954 or 1955 that the Union of India adopted this scheme.

Though I was getting on well with my practice in the High Court and Revenue

Courts, I did not get any professional satisfaction. In the High Court, whenever a case was listed and you went fully prepared, it would be adjourned on some trumpery excuse from the opposite side. The listing system, I believe, was one that was followed in the Allahabad High Court where, if a case was adjourned either by not reaching the top of the list that day; or, if it so reached and was adjourned at the request of one of the parties, the entire list Would be changed for the next day and one had to get a date fixed in the office some time within fifteen days with the consent of the advocates of both the parties. This, however, did not ensure that it would be taken up when it came on the list on the date agreed to between them. In this way a repeatedly adjourned case caused a conscientious and enthusiastic lawyer to lose interest in the case altogether. This practice was also followed in the subordinate courts like the City Civil Court or the District Courts. What was very surprising and frustrating was that the same procedure was followed even in murder and other criminal cases in the Sessions Courts or other Criminal Courts. Besides this, the evidence of the witnesses was not recorded continuously day-to-day. Whatever could be recorded for the day or part of the day would be recorded and the case adjourned for a fortnight so that the witness who was bound over had to attend the Court for several months before his evidence was complete. One could imagine the number of years a case would take for disposal.

I had often prepared a case and took bundles of books to the Court only to return crestfallen when it was adjourned. The system I was used to was different, whether it was in England or in Bombay or in Madras. Once a case came on the list, it was never taken out of it. The listed cases went up as cases above them were disposed of. If any one sought an adjournment or a pass over, it was only on a request to change its place below the case being taken up in the order of the list. This escalator system ensured that your case would be heard sooner or later, and by talking to the advocates in cases above yours, and ascertaining the length of time each of the cases would take, you could get an estimate of the approximate time at which your case would be heard. Sometimes the list ‘collapsed’, as it was termed, for instance, when suits were compromised, or where one of the parties died and legal representative proceedings were taken, or where they were adjourned for some good reason and your matter could be taken up sooner than was expected. In this system, as you were already prepared, you felt happy that it would at least be heard and disposed of. In view of the procedure followed in the Court, I attended the Court only when my case was listed or when I had to move some application or obtain interim orders.

Otherwise, I would work in my office preparing for cases, or considering opinions in matters in which I was the Legal Adviser – all of which required study. The clients knew where to find me as I would either be in my office or in the Court which was easily ascertainable. In this way my time would be fully occupied, unlike what I found was the practice of many who spent each day, whether they were engaged or not, chatting away in the Library on matters other than legal ones.

A few of us wanted to bring out a law journal in which English translations of the Urdu judgements of the Hyderabad High Court would be printed. While Nawab Alam Yar Jung, one of the judges, who became Chief Justice and later Law Minister, was sympathetic, the other judges, particularly Khalil-uz-zama Siddiqui, opposed it strongly. The reason probably was that in the all-India context the judgments of the Court might not come up to the standards of the other High Courts. This was exactly the reason why we wanted to bring out the journal, so that our judges would be conscious of the all-India standard in writing and considering their judgments. Quite often judges who did not hear arguments continuously, but in parts spread over months, were not able to look at the submissions cohesively as a whole or appreciate them at the time of writing the judgments. The finer points urged before them would be forgotten and often, on perusing the file after a long delay, some points not argued before them would be ferreted out in the judgment to the surprise of both the parties. While I say this, I am not to be understood as saying that there were no judges who were strict, insisting on cases being argued continuously and whose judgments were of a high order. There were certainly some who did not countenance any laxity and were strict. I remember Alam Yar Jung did not admit revisions against interim orders passed during trial, as he did not want the trial to be stopped on any excuse. Lawyers knew this and would try to manoeuvre for a Bench of which he was not a party. This could be achieved through the Chief Bench Clerk of the First Court who would prepare a list constituting Benches—termed *Nisab* — though the function was strictly that of the Chief Justice.

Abdul Hameed Khan was another judge who did exceedingly well on the original side. He was quick in disposing of cases and was thorough in his judgments.lt was subsequently, when the atmosphere became political and communal, that there were complaints against him of communal bias, but not in respect of his work in the High Court. Laxma Reddy and Ramachander (R. S.) Naik were the other two for whom the Bar had high regard and some referred to

their bench as *Ram Laxman Ka Durbar.* Raja Bahadur Bishweshwarnath who was for some time in the Judicial Committee was the first Hindu judge to be appointed Chief Justice of the High Court. He was one of the able and erudite judges. These judges contributed to the maintenance of the standard of the High Court.

Added to the frustrations pointed out above, there were others, namely, in respect of the work in Revenue or *Atiyat* (Crown Grant) Courts where the professional fees were substantial, but the engagements in cases before them depended on what influence you had or what pull you could muster with the decision-makers. Since the basic principle of the Crown Grant was that on a grantee's death the grant reverted to the grantor, and since on the principle that 'every grant is a fresh grant' the Nizam could grant it to any one he liked there was great scope for manipulation. If practising lawyers over a long period got used to and accepted the conditions as they existed, there was no problem. To a few of us who had been trained in different schools of thought, the conditions in which one had to work were certainly discouraging. In any case, since I was concentrating on commercial practice and on holding retainers from Government Companies and other commercial concerns, I was kept busy in giving advice and written opinions. Though no fees were paid separately for written opinions, a practice that was not prevalent in the state, I was earning more than a Divisional and Sessions Judge from my retainers and from the monetary point of view I was quite satisfied with my practice those days. My problem was not that I could not have a lucrative practice — indeed I was not worried on that score — but as I said I did not have the job satisfaction in so far as court procedure and practice were concerned.

2

Judicial Service

The scheme of reorganisation of the Legislative Department and the Legal Advisers' Department was approved in February 1946. Along with this, a Deputy Secretary's post was sanctioned keeping in view the recommendation of the Law Minister, Nawab Alam Yar Jung (erstwhile Chief Justice). While giving his opinion to the Executive Council, he had said that the post of Deputy Secretary (Law) should be made equivalent to and interchangeable with *Nazim-e-Sardar Adalat* (Divisional and Sessions Judge). Each Divisional and Sessions Judge had jurisdiction over four districts which constitute a *Suba*. Each of the districts had a District Judge *(Nazim-e-Zilla)* who did not exercise the same powers as the Divisional and Sessions Judge. The Divisional and Sessions Judge was in fact the judge who exercised the powers of the Sessions Judge for the four districts. The posts of the City Civil Judge, the Small Causes Court Judge and the Divisional and Sessions Judge, Secunderabad, were also of the same rank. To this, the Law Minister wanted to add the post of the Deputy Secretary (Law). This post was offered to me by the Secretary (Law), sometime in April 1946 on the basis that the post would be upgraded to the post of Divisional and Sessions Judge. I wanted to accept, but my father was not in favour of it. He then consulted Shri R. S. Naik who advised him not to stand in my way because an appointment as a High Court Judge could also be made from these services and since I would be the only Hindu to hold the post of a Divisional and Sessions Judge and as the declared policy of the Government was that, in future, an equal number of Hindus and Muslims would be recruited, I would have a chance to be elevated to the Bench of the High Court. In view of my consent on the basis that the post I would be occupying would be that of a Divisional and Sessions Judge,

I was appointed by a *firman* of H.E.H. the Nizam. Subsequently, the undertaking given at the time when the offer was made was complied with by th *e firman* of H.E.H. the Nizam dated (2 Ramzanul Mubarak 1366 H), 21 July 1947 which upgraded the post of Deputy Secretary (Law), as equivalent to and interchangeable with that of the *Nizam- e-Sardar Adalat.* Even after the issue of this *firman,* some of the bureaucrats of the H.C.S. (Hyderabad Civil Service) cadre tried to hedge the decision by not communicating it to the High Court. However, their efforts did not succeed, and in February 1948,1 was appointed as a judge of the Hyderabad High Court.

A permanent judge had been appointed a Member of the State Judicial Committee and being the seniormost Divisional and Sessions Judge I was chosen for the vacancy. When the vacancy had arisen in the Judicial Committee, there was a proposal to appoint Raja Ram Iyer, a migrant from Madras who had mostly practised in the British Administered Area of Secunderabad. A dissent note was submitted by some of the Members of the Executive Council including the Home Minister, an erstwhile Chief Justice, on the ground that Raja Ram Iyer was not conversant with Urdu, the language of the State and of the Courts. In response to this note, H.E.H. The Nizam, after observing that Raja Ram Iyer was not conversant with Urdu, ordered that someone well-versed in Urdu be proposed. As a result of this *firman*, Justice Rai Manohar Pershad, a judge of the High Court was proposed for appointment to the judicial committee and I was proposed for the High Court in his place.

The Nizam approved these proposals and consequently I took charge of the appointment on 21 February 1948. A day before I took over as a judge, the lawyers had boycotted the Courts on the ground that law and order in the state was so disturbed that it was not possible for lawyers to appear in courts. Whether this was justified or was a political ploy, I had to face whatever situation confronted me from then on. Fortunately, as far as the High Court was concerned, it was peaceful. But in cases in which neither the lawyers taking part in the boycott nor the client appeared without there being valid reasons for their not appearing under the provisions of the law, the appeal or revision had to be dismissed or decided *ex parte.* The application of this rule gave no option to the judges but their conforming with it made them unpopular with the members of the Bar who were on strike.

My appointment aroused envy in many, particularly in a section which was backing one of their own candidates from the Bar. In any case I took my seat at a

time when political conditions were in a ferment in the state. Even the Chief Justice Khalil-ul-Zama Siddiqui who gave me the oath of office before the President of the Council and who, I thought, was friendly, confessed after I delivered my first judgment sitting with him, that he had opposed my appointment on the ground that I was not well-conversant with Urdu. He said, 'You write perfect Urdu and I am quite happy that we have acquired an able judge for our High Court'. I do not know why he thought I did not know Urdu, when he knew or ought to have known that for over a year and half I had been drafting all the intricate laws and had piloted one of them drafted by me, The Hyderabad Income Tax Act, through the Legislative Assembly. It appeared that he had been against me for other reasons. Earlier Nawab Azghar Yar Jung, a former judge and father of my friend, Mr. Justice Mohammed Ahmed Ansari, who was then the Legal Adviser, had informed me that there were people who would envy me and advised me not to bother about them . On the one hand, these persons were carrying on propaganda against me, and on the other, they wanted me to fall in line with other Hindu judges who were not dismissing the cases when none were present.

A brother of an erstwhile junior of mine visited me on behalf of the Hindu lawyers who were boycotting the courts. He showed me the orders passed by the three Hindu judges, all from the Bar. They were identically worded to the effect that 'because of disturbances, it had become difficult for lawyers to function and since the lawyers or their parties could not be present, the cases may be adjourned'. I told him that the request was improper as I felt that lawyers could easily appear and plead for an adjournment on the ground that they could not get instructions from the clients. This would have afforded any reasonable judge an opportunity to adjourn the case or cases and order notice to the party that the lawyer was representing. I told him that whatever the other three judges had been doing, I, at any rate, consistent with my oath, would not be willing to pass similar orders. Though I was told I would become unpopular, I was firm that I would not discharge my job on communal lines even if the Hindu lawyers pilloried me; I was prepared to face the consequences. He went away with a wry face but my reason and conscience would not permit me to act differently.

Though I told him that I would not pass stereotyped orders, whenever circumstances justified, I found a way out to help or devised some way of postponing their cases, so that parties did not suffer. In many cases several Hindu lawyers appeared, as is apparent from the reported judgments in the *Nazair-e-*

Osmania (official reports of the High Court). I myself wrote over a hundred judgments of which about one-third were reported. The Police Action which commenced on 13 September 1948, really unsettled the judiciary. Many district judges and *munsifs*, particularly from Osmanabad, Bhid, Nanded and Aurangabad, left their posts and fled to Hyderabad. After 17 September 1948, when the Indian Army took over the State, it took about a month or a month and a half for changes to be effected by it. The Military Governor, under his notification, began to give orders and later the Nizam himself, by a *Firman*, conferred powers on him to administer the state and gave him the powers to pass ordinances and laws. Legal validity was thus ensured for the acts of the Military Governor and his administration through Chief Civil Administrators.

Three permanent judges of the High Court, who were on other duty, namely, Shripat Rao Palnitkar as Speaker of the Legislative Assembly, Rai Manohar Pershad as a Member of the Judicial Committee and Mohammed Ahmed Ansari, Legal Adviser to the Government, a post equivalent to a High Court Judge's post, reverted to the High Court. Apart from these, the two additional posts in the High Court and two in the Judicial Committee were abolished. As a consequence, the four juniormost judges of the High Court, namely, Sahebzada Mohammed Ali Khan, Vithal Rao Deshpande, Abdul Khaliq and I were reverted from the High Court and Moulvi Abdulla Timmapuri from the judicial committee. Being the juniormost, I was the first to revert to the post of Deputy Secretary, Law, on 16 November 1948. Thereafter the other three reversions took place. One person from the High Court and another from the judicial committee were reverted to the Bar. Later, Justice Murtaza Khan, who was a public prosecutor and was elevated as a High Court Judge, had to resign when the Military Administration confronted him with manipulating a false date of birth when he was elevated.

After I was reverted I was greatly troubled by the fact that an H.C.S police officer, who was appointed as the Home Secretary, had manoeuvred to see that the post to which I returned was not the same post of the Divisional and Sessions Judge from which I was elevated to the High Court. I had to fight tooth and nail for the restoration of my earlier position. (I have referred to the injustice meted out to me in detail in my reminiscences, *The Revolutions I have Lived Through.)* At last, towards the end of 1949 I succeeded. Once again, luck played a part in my rehabilitation and in the end justice was done to me.

The Military Government was replaced by Shri M. K. Vellodi, a great

administrator, who became the Chief Minister on 1 December 1949. Sir George Spence, I.C.S., retired Law Secretary, Government of India, and former Law Minister in Lord Wavell's Interim Government, was recalled to become the Legal Adviser to the Military Government. Justice R. S. Naik, who had suffered injustice before the Police Action (though the seniormost judge, he was not appointed as Chief Justice on communal grounds) was now, in June 1949, appointed as Chief Justice for three years by the Military Government. These three people played an important role in my rehabilitation along with Shri D. S. Bakhle, the erstwhile Chief Civil Administrator, who had earlier been misguided by Hindu H.C.S. officers espousing the case of an H.C.S. officer, their close friend, to be sponsored for the higher post by making him senior to me.

The note of 9 December 1949, nine days after Shri Vellodi took over as Chief Minister, showed that luck had turned in my favour. I was sent for by Shri Bakhle and was given an opportunity to give my version of the events, which I did freely and frankly. I exposed the entire manoeuvres of the Home Department. Shri Bakhle heard me patiently and informed me that the Government had decided in my favour. The note conveying the decision of the Government endorsed by Shri Bakhle and confirmed by Shri M.K. Vellodi negated the note of the H.C.S. Home Secretary who tried to overrule the recommendations of the Administrative Bench of the High Court. The Home Secretary who had earlier brainwashed the Chief Secretary and Chief Civil Administrator against me was thus overruled.

Shri Bakhle who had earlier taken a view against me noted that it was true that I was directly recruited from the Bar as Deputy Secretary. But subsequently my grade and pay, while holding that post, were clearly defined in the *Firman* of 21 July 1947. The *Firman* clearly directed that I should be given the grade and pay similar to that of a sessions judge. Shri Bakhle noted that I was appointed as a judge of the High Court on 25 February 1948 and reverted as Deputy Secretary, Legal Department on 16 November 1948. Therefore my emoluments would have to be refixed with effect from the date from which the recommendations of the Pay and Service Commission were brought into force. For the period I officiated as a judge of the High Court, I would, of course draw the pay fixed for a judge. As regards my future posting, the alternatives were (a) to retain me in the Legal Department in the post so far held upgrading the post to that of a Joint Secretary so long as it was held by me; (b) to place my services at the disposal of the High Court for appointment on the judicial side.

Bakhle's note added that the Council Meeting had decided that 'Mr P. J. Reddy should be appointed as Judicial Member of the Income Tax Tribunal. The Chief Justice will be informed of this and requested to submit proposals for his relief without further delay'.

After this, I met Sir George Spence in connection with another legal matter about which he wanted to see me. As soon as I went there, he asked me whether Bakhle had sent for me. I said he had. He then told me that Bakhle had consulted him about my case and wanted his opinion and that he had told Bakhle that he had never heard of any case in the whole Commonwealth where a High Court judge had been reverted to the post of a Deputy Secretary. I thanked him for standing up for me.

The Chief Justice was not in favour of my becoming the Chairman of the Income Tax Tribunal as I would be away from the judiciary. On my saying that I would inform the Government that I was not willing to accept the offer and preferred to stay in the judiciary, he asked me to seek the advice of Sir George Spence, which I did. Sir George Spence advised me that I should not irritate the Government when they had posted me on a post higher than the Divisional and Sessions Judge and just below a High Court judge.

I met the Chief Justice and conveyed this to him. The Chief Justice then said, 'Though I regret that you are not going to be directly appointed to a post in the Judicial Services, in the circumstances, it cannot be helped.' But, as the adage goes, 'Fortune turns like a wheel.' The Government of Hyderabad received a direction from the Government of India that, on and after the inauguration of the Constitution on the 26th day of January 1950, there would be financial integration and the Income Tax Tribunal at Bombay would have jurisdiction over the State of Hyderabad. Consequently, no appointment should be made to the Income-Tax Tribunal under the Hyderabad Income Tax Act. On receiving this communication, I went to see the Chief Justice who asked me where I would like to be posted as a Divisional and Sessions Judge. When I said I would prefer being posted at Secunderabad, he did not show much enthusiasm about the request perhaps because the Secunderabad Bar was brought up on British Indian traditions and was alert and quite up to the mark. The Secunderabad Bar at the time appeared dissatisfied with the then Sessions Judge. As the Chief Juctice was apprehensive about my ability to manage at Secunderabad, I told him I knew the Secunderabad Bar, was its member and got on quite well with others. 'Please give me a chance', I said adding, 'I have no choice. Wherever you post

me, I will go’. Ultimately, after the inauguration of the Constitution on 26 January 1950,1 was posted as Sessions Judge at Secunderabad which coincidentally was in February, the month in which I was elevated to the High Court in 1948. Thus ended my travail; the justice which I believed would be done, was done. I realised that the Government repented for having taken wrong decisions at the instance of interested persons and wanted to make full reparation to me.

In a way I was glad that I had to go through all these vicissitudes because I became conscious of the fact that there must be many persons like me who have had to face injustice and only some of them had the good fortune to receive justice. To learn one’s lessons at a young age, to my mind, is much better than to learn them when it becomes too late. By an order dated 18 February 1950,1 was appointed as Divisional and Sessions Judge in the vacancy of Hafeez Ahmed Khan and posted in Secunderabad. I was relieved on 23 February and took charge of this important office on the same day with the full confidence that I would now earnestly continue to serve the judiciary without fear or favour. My seniority among the sessions judges was also fixed as being the seniormost Divisional and Sessions Judge. I had suffered enough injustice to know and realise what injustice was, and as far as possible, my endeavour from then on was to see that no one who came before me should suffer injustice.

3

Divisional and Sessions Judge

Towards the end of my first day as a Sessions Judge, the accountant of the court brought to me a register to sign and certify that I had checked the accounts, verified the cash, the credits and the debits with the vouchers and found the balance of cash on hand to be correct. I had always been afraid to touch other people's money. It was much more so when public moneys were concerned. I had discharged my duties as a Deputy Secretary (Law) which vested administrative responsibilities in me; but during the two and half years in that position, I had never had to certify accounts as was now required of me as a Divisional and Sessions Judge. With trepidation, I began to check the accounts against the vouchers and after an hour or so, discovered that the cash balance in the account was a few rupees more than it should have been. When I began questioning the accountant, he was not able to explain; so, I endorsed what I had found stating that 'an excess balance reflects the incorrectness of the accounts as much as a deficit balance does' and hence directed that a report should be submitted. The entire office was surprised at my meticulousness. Because of this the office was activised and ultimately the mistake was traced, the excess cash balance regularised and the accounts adjusted. A similar situation arose when the Accountant General cut off some amounts from the arrears of pay claimed and payable to me. I took it up with the office and after the papers had been shuttled to and from the Accountant General's office, I believe, the accountant told my accounts officer, 'Your judge seems to be a strict officer who, for the sake of a small amount, is carrying on this correspondence.' The accounts officer then told him that the Sessions Judge did not like any irregularities in official matters. It was not a matter of a few rupees but was a case of irregularity in the functioning

of the department which could not be tolerated. He then narrated to him the episode about the excess amount of cash shown in the cash book of the Sessions Court and how I had made them check the accounts till the mistake was ultimately discovered and the deficit properly explained and accounted for. The Accountant General's Office ultimately accepted my stand and passed the arrears bill as claimed by me, that too, without any deductions.

The type of civil work in the court was mostly of a commercial nature including partition and matrimonial matters and title suits. The criminal work comprised sessions trials, appeals against convictions from the orders of the magistrates and criminal revisions which ultimately had to be referred to the High Court for final determination. These, however, were few. Apart from this, I was appointed as Matrimonial Judge for Parsi divorce and matrimonial cases, which under the Parsi Matrimonial and Divorce Act had to be tried with a jury of seven Parsi delegates. I was also appointed as a judge to try and determine industrial disputes under the Trade Disputes Act.

In the civil cases, I found a happy tendency among lawyers to get their clients to compromise. There were of course a few lawyers who were tenacious and rarely consented to their clients' compromising their disputes but would go the whole hog to have the matter determined. In respect of trial of sessions cases, I had an opportunity to rectify the laxity in the trials which, owing to the amendment of the Hyderabad Criminal Procedure providing for sessions trials, had to be tried by warrant procedure. Since there was a separation of the judiciary and the executive, for the first of time in India or in any of its states, the police found that even at the committal stage the magistrates in most cases would discharge the accused for want of *prima facie* evidence. This brought the police investigation into disrepute. The government was persuaded to amend the Criminal Procedure Code so that a case could be committed at the request of the accused, or by the magistrate, without recording any evidence, merely on a perusal of case papers including case diaries. Or, if he wanted to examine witnesses and commit on finding a *prima facie* case he could do so. This amendment almost led the magistrates to be used as a post office. It was left to the sessions judge to examine the witnesses, and thereafter frame a charge if there was a *prima facie* case; otherwise he could discharge the accused. In most of the cases, however, there would not be any discharge. This procedure enabled the resummoning of witnesses after the charge was framed, for further cross-examination. This was being taken advantage of, to delay and postpone the

conclusion of trials. I used to get frustrated as a lawyer when a criminal trial, owing to a procedural change, dragged on, in some cases, for more than a year or a year and half. Dragging on criminal cases, in my view, invariably ended in a miscarriage of justice. Whether it ended in the conviction of an innocent person or in the acquittal of a guilty one, it resulted in a travesty of justice. Because of delays in the trials, the accused invariably exploited the inclination of witnesses to become sympathetic. Thus in most cases tampering with and diluting of the evidence led to acquittal. I had decided when I was practising that, if ever I had an opportunity, I would insist on a day-to-day trial of a case until it was concluded. Pursuant to this resolve, I discussed the matter with the Public Prosecutor and asked for his co-operation with me by binding over all the prosecution witnesses for each day till all of them were examined. I was willing to sit late in the evening beyond the usual time of 5.00 p.m. if necessary, and complete the evidence. I even requested the lawyers for the defence side to cooperate with me till the last of the witnesses bound over for that day was examined; I must say they agreed with my request. The Public Prosecutor, Shri Dattatreya, brought up in the tradition of the British Indian concept of trials, promised to cooperate with me. He kept his word. For this purpose, one or two preliminary hearings would be fixed and when I was assured that the trial once started would continue from day to day till the judgement was pronounced, I would fix a date and give out a programme. This procedure went on smoothly and everyone concerned cooperated.

The proceedings and judgments had to be written in Urdu; but under the terms of rendition (of Secunderabad to the Nizam) those who were practising before the Secunderabad Court could argue in English and even if proceedings and judgments were written in Urdu, English translations thereof had to be provided. With the Constitution of India coming into force on 26 January 1950, English became the language of Hyderabad High Court. But, in the subordinate courts, Urdu was continued until the Part B States' Laws applied the Central Acts to the state. There was, however, an enactment of law which permitted proceedings and judgments in English.

At the very outset, I was called upon to determine whether it was proper for an advocate appearing in a case, to give evidence in that case. After hearing the arguments, I held that a person, who is appearing as a Counsel, should not, as a rule, give evidence in a case in which he is representing a party; but if he has knowledge of certain aspects of the case and wishes to give evidence, then the

proper course would be to retire from the case and then give his evidence.

The question arose in a case where the High Court had ordered bail to an accused, who had to furnish a surety. While furnishing the Bond, the advocate was asked to certify that these bonds were executed by the persons of their own free will, which the persons so directed to verify, did. Another lawyer identified the executant as a person he knew. On the surety denying that he had ever executed the bond, I had to determine the propriety or otherwise of this. Accordingly, I determined on the strength of the evidence that the surety was the same person who had executed the bond.

There were many civil and criminal cases which I tried, but I do not propose to refer to all or most of them as these memoirs would become overburdened. I wish, however, to refer to a few of them which may be of interest to readers.

The very first criminal trial was in respect of an attempted murder. One Perumal, who used to sell flowers in Secunderabad Market, obtained them from a wholesaler whom he would pay in the evening after selling the flowers. The wholesaler and Perumal (who was the accused in the case) had known each other for nearly five years. Their relationship was friendly till the accused began to default and owed a substantial sum to the wholesaler. When he was unable to pay the sum due, the wholesaler refused to give him any further credit. This resulted in a quarrel. One day, while the wholesaler and the accused were going together, without any notice or warning, the accused suddenly whipped out a knife and stabbed the wholesaler in the stomach. The wholesaler tried to catch the handle of the knife but the accused pulled it out and began to run. One of the witnesses pursued him shouting, ‘Catch him’. A cart-puller tried to catch him but had to let him go as the accused drew out the knife and threatened him. The accused later threw away the knife while running away and also left his chappals behind. The prosecution case was that the accused then went to the Police Station and surrendered himself. He made a statement to the police and took them to the place where he had thrown the knife and left his chappals. Shri Ram Gopal, the advocate, who was appearing as *amicus curiae* on behalf of the accused, did his best to defend the accused; but the evidence was overwhelming. I convicted the accused of an attempt to murder and sentenced him to undergo five years’ rigorous imprisonment.

Another case in which I delivered a judgment in English was that of two couriers of Telangana Communists, who were caught while in possession of explosive

substances, bombs and firearms. A young man, who was responsible for apprehending them, was keeping a watch on the Railway Basti as there had been thefts a few days earlier. On the night of 15 June 1949 at about 9.30 p.m. he heard some voices. He then saw three persons carrying bags coming towards him. The young man who was watching, challenged them asking, 'Who are you?'. Whereupon the three persons began to run away. He raised a hue and cry and with the help of others chased and caught them. In the leather bag carried by Shiva Reddy, Accused No.1, there were six bundles of Communist literature. Accused No.2, Seethayya, had a bag in which there were 14 bundles of books. Accused No.3, Srinivas Reddy, was carrying eight items consisting of five bundles of hand grenades, a bag of sodium iodide and five fuses for five hand grenades, 25 live cartridges and a 32 bore pistol The three accused were taken to the Railway Police Station and handed over to the Railway Police. It appeared that Accused No.3, Srinivas Reddy, who was wanted in another case, was handed over to the police authorities concerned, for the purpose of production before that court. Later, it turned out that he (Srinivas Reddy Accused No.3) had been convicted by the Special Tribunal for the offence of murder and sentenced to death but had escaped. So the other two alone were put up for trial. There was overwhelming evidence against the accused. Apart from this, Accused No.l and 2 had made confessions before the Third City Magistrate but subsequently retracted them. After carefully weighing the evidence I convicted both the Accused Nos.l and 2 of conspiracy between them and the escaped accused (Srinivas Reddy) to carry the hand grenades, pistols and cartridges to some unknown place or places and in pursuance of that design, Accused Nos.l and 2 were accompanying the absconding accused which was in contravention of the provisions of the Explosive Substances Regulations and the Arms Regulations.

The bundles of circulars and leaflets contained detailed instructions to further the aim of the Party to which the accused belonged. The instructions given in one of the pamphlets are of interest. It showed how meticulously the communist party issued instructions to the partymen on carrying out their surreptitious activities and also, in so working, how to escape being caught. About these instructions and training given to the couriers and partymen I observed as follows: 'It would appear from the Material Objects (M.O. s) discovered that secrecy of the Party, their movements and the object to be achieved are such as would run counter to the accepted notions of a law-abiding citizen. The persons belonging to this Party are even told how to get cigarettes; how to keep watch; how to move by night and day; how to shave their heads keeping *Juttus* (tufts), wear coarse

clothes and avoid wearing watches and even give up contacts with their families if the families cannot themselves come away from the rest of the world against which they have declared their hostility and which would lead to their being discovered. In short, a Member of this Party has no life apart from his organisation.' While sentencing each of the two accused to five years' rigorous imprisonment, I directed an administrative enquiry in respect of the allegations made against the police that they had maltreated them while they were in police custody.

The most poignant of the cases I tried was that against one Nagamani. Her husband being unemployed and unable to maintain her and her two infant children, she threw them into a well and jumped into it after them, in order to do away with them and herself, rather than see her children starve and suffer. Fortunately, the neighbours hearing the noise, were just in time to save her and the two children. The charge against her was of attempted murder of her two children and also of attempting to commit suicide. After convicting her on the evidence, I asked her why the sentence of the court should not be passed against her. She was unconcerned with the question and while ignoring it, she requested me to find a job for her husband. I, however, sentenced her till the rising of the court. In my judgment, I had dealt with two contentions, viz., one dealing with the submission that she was mentally deranged and did not know what she was doing or did not know the consequences of her action and, therefore, was not guilty of any offence. The second one was that relating to the punishment that should be awarded to her.

While dealing with the first submission, I observed: 'From the facts proved, there is no doubt that the struggle for existence was very hard and it is probably because of this the accused having done all she could do in the battle for survival and having failed, was driven by the pangs of hunger and confronted by the bleak prospects of getting nothing better, had decided to bring to an end their hapless miserable existence. In pursuance of this object, she threw the children into the well and attempted to do away with herself by jumping into the well.' I held that she had a compelling motive and knew what she was doing as well as the consequences of her act. Accordingly, I convicted her. In respect of the second submission dealing with the sentence, I observed: 'In my view, the punishment for a crime must be commensurate with the motive with which the offence has been committed. A person may be driven to act not by the strength of any bad or self-rewarding motive but by that of his or her social or

sympathetic impulse. The accused in her struggle for herself and her children faced with an unequal fight against the heavy odds of economic conditions, distress and poverty which prevail in this country, had come to her last tether and had in that frame of mind attempted to do away with her children and herself. In these circumstances, she should be an object of commiseration and not of punishment.'

It was after taking all these into consideration that I sentenced her till the rising of the Court. In response to her request after I had sentenced her, I rang up my school friend Iqbal Hyderi, who was the Chief Engineer (Loco), Nizam's State Railway, and after explaining the circumstances which he already seemed to have known through the newspapers, asked him if he could give a job to her unemployed husband. He readily agreed and asked me to send the man to him. After the accused had served the sentence till the rising of the Court, I asked my Superintendent to tell her to take her husband to Iqbal Hyderi. I was happy when Hyderi informed me that he had found a job for her husband.

This judgment of mine was highlighted by the all-India Press. In particular, a Bombay weekly *Current*, while referring to this case and citing my observations, commented that the Government should do something to improve the economic conditions of our people.

There was another sensational case involving an influential woman (A-1) who was being tried along with her husband (A-2) and a taxi driver (A-3) for conspiracy, abetting, rescuing, harbouring and concealing a prisoner convicted of murder and serving a life sentence. The case of the prosecution was that A-l had along with her husband (A-2) and taxi driver (A-3) conspired to enable her brother, Kazim Husain a military Captain, to escape to Pakistan while he was serving a life sentence for the murder of a colleague Captain in the army. Pursuant to this conspiracy, she got a Civil Surgeon of Osmania General Hospital to examine her brother the convicted Captain in prison for some supposed illness and then sought for him to be treated in the Osmania General Hospital. The doctor, perhaps without the knowledge of her intention, to oblige her, certified that the convicted Captain should be shifted to the hospital for treatment. After he was shifted, A-1 managed to get him to escape from the hospital and enabled him to escape to Pakistan.

On the day the case was due to begin, the civil surgeon on whose advice Captain Kazim Hussain had been shifted to his hospital, came to see me at my residence

at 9.00 a.m. I knew him well but was surprised to see him so early at a time when doctors are usually on duty at the hospital. On my enquiring, he said he had been summoned as a witness to be present in court that morning at 10.00 a.m., but as he had to see the Chief Minister (Shri Vellodi), who had called him, he would not be able to be present in the Court. I told him I did not discuss Court matters in my house and since I was meeting him as 'Jaganmohan Reddy' in my individual capacity, I could say nothing about his problem, and I could not say what I would do when I sat in Court. I told him politely that it was not proper for him to have come to see me in my house. Anyway I saw him off. When I went to the Court and sat on the Bench, I saw the civil surgeon sitting in the Court. Evidently, he seemed to have skipped his appointment with the Chief Minister, or perhaps he had none to skip, and might have been persuaded to delay the trial by absenting himself on some excuse. Such an attempt made later also did not succeed. A-1 herself tried to throw a wrench into the smooth process of the trial procedure adopted by me. All the accused were on bail. After the trial had commenced on 19 December 1950 and had gone on from day to day till 2 January 1951, A-1 did not turn up on that day and it was said that she was suffering from a headache. I was not satisfied with the excuse as generally headaches and stomachaches are not visible and can be genuine or faked. I immediately passed orders directing Dr Boregaonkar, the renowned gynaecologist and Superintendent of King Edward Memorial Hospital (now called 'Gandhi Hospital') to examine the woman accused (A-1) along with a lady doctor and report about the condition of the accused. He was directed to state whether A-1 was ill; if so, what her illness was, whether it would incapacitate her from attending Court; and if so, the period that would be required for her to be able to attend the Court. The medical report of the aforesaid doctor stated that the accused was 'fit to attend the Court and there was no evidence of any disease incapacitating her from attending the Court'. I immediately cancelled her bail and directed that she be forthwith taken into custody and produced in court the next day. There was a great deal of public interest as the newspapers, Telugu, Urdu and English came out the next morning with sensational headlines. The entire Secunderabad Court compound was filled with people waiting to hear what orders I would pass. A-1 would not voluntarily come into the Court. She was making quite a scene by crying 'Allah my margayi, my margayi'. (Oh God! I'm finished -1 am finished). I sent word that if she did not come quietly, I would have her brought before me on a chair. As she was adamant, I had to get her produced in court on a chair. When asked why

she should not be remanded to custody, her lawyers stated that they were filing an application for the transfer of the case from my court to another court and another application praying that she should not be remanded to jail by cancelling her bail. Apart from these applications, they had nothing more to say. In view of this, I confirmed cancellation of her bail, and remanded her to jail till further orders. While passing orders on this application, I narrated all the facts which were also narrated in the transfer petition. After narrating the sequence of events, I said since A-1 had moved a petition for transfer, I was adjourning the trial by ten days. This was on 3 January 1951. Two petitions were moved in the High Court against my orders – one for the transfer of the case from my court, and the second one to release her (A-1) on bail. These petitions came up before the Chief Justice, Shri R. S. Naik, sitting with another judge. The transfer petition was peremptorily dismissed on 12 January 1951 with the remark that the petition was not at all justified. In respect of the bail petition, the Court directed it should be presented before me for orders. After hearing the parties, I released her on bail together with a surety of Rs.50,000/-. A well-known personality, related to her, personally attended the Court to execute the surety bond. After this I directed her release on bail. After her release, the trial went on day to day and concluded on 10 February 1951. Judgment was pronounced on 16 February 1951 convicting the accused and sentencing them. The appeals preferred against my judgment were dismissed by the High Court. This shows how a person who is bent on continuing the trial can achieve the objective provided he is firm. The High Court, too, I must say with great respect, dealt with the matter expeditiously and enabled the trial to be proceeded with.

Another case I tried at the time was of a young woman accused of the murder of her husband. The prosecution alleged that she had cut her husband's throat. The evidence *prima facie* pointed to her guilt; but there were subtle implications to the contrary and so it was hotly contested. In my mind, a tussle ensued while assessing the evidence to determine her guilt or innocence. My training as a lawyer and the techniques which I had to apply to the sifting of the evidence and to the ascertainment of the truth were such that for days together I battled against the superficial view suggested by the evidence.

The questions resolved themselves into: Was the woman a participant in the crime? Was she a mere spectator? Was she present at the scene of crime at all? There was a great deal of evidence about her premarital love affair. Her letters indicated her attachment to a man with whom she was passionately in love. This

could furnish a motive both for her and for her paramour to commit the crime. The prosecution case was that the deceased, a young man of twenty-three or twenty-four, had allowed his throat to be cut from ear to ear by this woman, who, it was alleged, confessed to having committed the crime single-handed.

The doctor's evidence completely ruled out the possibility of the crime being perpetrated when the victim was sleeping. The dead body was on the floor lying face downwards with legs tied together. The hands were free. It was alleged by the prosecution that, while pretending to play a game with her husband the woman tied his feet and hands for fun, as it were, and then cut his throat. The room in which the body was found had a door which opened on to the road and the latch from outside could easily be opened with the fingers. This fact I could ascertain on an inspection of the place.

In these circumstances, the question was whether she did it alone or was a silent and unwilling spectator while some other persons perpetrated the crime, or whether she was there at all. Looking at the evidence in this critical manner, it was not possible to come to the conclusion that she could have perpetrated the crime alone, as alleged by the prosecution. The possibility of one or more persons entering the room from outside could not be ruled out. There was again the impossibility of a single person like this woman perpetrating the crime all alone. Added to all these, there were many defects in the investigation. All these factors materially affected my conclusion in the case.

The reason for my giving this illustration is to show that my mind, at any rate, did not work, as some would say, from a hypothesis backwards, that is, starting with a solution or conclusion and then trying to find out in the evidence the reasons for that conclusion. There was definitely a tussle in my mind when I proceeded to weigh the evidence to ascertain the facts and to see what conclusion could be reached upon the facts proved without reference to my predilections and inclinations. It is immaterial what that particular conclusion was. What is important is the process by which that conclusion is reached. In the end, I acquitted the accused.

Yet another case of great interest was that relating to the dacoity involving jewels worth Rs. 17 lakhs belonging to Nawab Zahir Yar Jung from his house in Secunderabad, by an expert Inter-State gang from Lahore. The prosecution case was that, on the night of the 26 and 27 June 1946, a servant girl in Nawab Zahir Yar Jung's house noticed a person running away. She gave an alarm which woke

up the Nawab Saheb and the Begum Saheba who then discovered their *khalamdan* (jewel box) containing jewellery and a *pandan* (betel and betel-nut box) were stolen. The Secunderabad Police of the British Administered Area sought the assistance of Sardar Fazal Rasool Khan, Assistant Commissioner of City Police, Hyderabad, in the investigation which was being conducted by Douglas Pulleyn, the Superintendent of Police of the British Administered Area. The *khalamdan* and thirty-four jewel boxes in it were recovered between the railway line and the Palace of *Sultan-ul-Mulk* at Begumpet the very next day. A-1 to A-3 were arrested in Lahore and the jewellery was recovered from Lahore, Amritsar, Karachi, Bombay and Calcutta.

It was alleged, and I found it established, that the Secretary to the Nawab Saheb, who was also accompanying the investigating' officers, had, at Lahore, unknown to them, negotiated and recovered jewellery worth Rs 4 lakhs. The jewellery that was actually recovered was of a fabulous value. There were emeralds of antiquity and rubies of such colour that they were said to match the blood in pigeons' eyes.

One z*amarud* (emerald) was sold by A-1 through jail and bought by one of the jewellers who laid a false claim to it. He even went to the extent of saying that since the police wanted an emerald of a certain weight, he had to have the corner broken of one of his own as it weighed more, to bring it to the same weight, a story which I did not believe.

After A-1, Noor Mohammed was confined to jail, he escaped after burrowing a tunnel under the jail and was arrested at Calcutta at the instance of Fazal Rasool Khan just as he was about to take a steamboat for Rangoon. A-1 had, before he tried to escape to Rangoon, hidden several beads of the *zamarud* (emerald) in a wall of the *Nakhuda* Mosque in Calcutta by cutting open one of the walls and plastering it. Some other beads of emerald were rolled up in a cellophane paper and hidden by A-1 in his anus from where they were recovered.

Witnesses from all over India from the places mentioned above were examined to prove that they had purchased the stolen jewellery from A-1. A-2, the son of a z*amindar,* was discharged as there was not sufficient evidence against him. A-3 was a thin, wiry person who seemed to have developed the skill of creating a vacuum between his back and the corner of a wall and going up it like a lizard. He was the one who went into the room and got the *khalamdan* and the *pandan.* A-1 had got an operation done in his mouth for the purpose of creating a pouch

from within the mouth and the neck so that he could swallow and hide anything in the pouch. Burgula Ramakrishna Rao, who was under detention for political agitation and who later became the Chief Minister of Hyderabad State, told me long after that A-1 who was also in prison during that period used to demonstrate to him and other political detenus how he could make a coin disappear by putting it in his mouth and later bring it out. It appears A-1 suspected A-3 and tried to administer poison to him in his food. A-3, apprehending some such thing, gave the poisoned food to a cat which, after eating it, died. Immediately thereafter, A-3 requested that he be produced before a magistrate to make a confession, which he did. After that, to ensure the safety of A- 3, A-1 was kept in solitary confinement and A-3 was confined to another barrack.

The case was interesting not only for the finesse with which A-1 and A-3 committed the burglary but also for the vigorous investigation conducted by Sardar Fazal Rasool Khan, who was one of the most competent and accomplished detectives of the Crime Branch of the Hyderabad State. He was never accused of third degree methods. He always earned the confidence of the accused and by his manners and suavity, he was able to break through even a difficult case. But at one stage I was quite surprised when A-1 suddenly got up, asked his lawyer to sit down and himself started cross-examining. When a witness from Lahore came to give evidence of A-1’s sale of stolen jewellery to him, A-1 asked him whether his daughter was unmarried, whether she was doing her LL.B., and whether she was not his (A-1’s) mistress. I could see that the witness was completely thrown off balance. While he admitted the first two points regarding his daughter, he denied the third very vehemently.

After convicting the accused and sentencing him, I suggested to the Government that after the sentences were served out, the accused should be repatriated to Pakistan. We could do without such competent dacoits in our country. The trial took thirteen days and the next day I pronounced the judgment. I wish to emphasize that even though there were a large number of witnesses to be examined from all over India and Pakistan, it was possible to complete the trial and pronounce the judgment within the time above mentioned.

I had to deal with one or two divorce cases. One was a petition filed by a wife against her husband, both parties being Christians. It was contended that, after the rendition of Secunderabad to the Nizam, the Central Acts ceased to be applicable. Hence, no divorce petition could be entertained under the Indian Divorce Act. I rejected this contention on the ground that the petition was not

under the Indian Divorce Act but was in fact a suit filed in accordance with the general principles of equity and good conscience. The Hyderabad High Court had, in a Full Bench judgment, held that where Christian subjects of the Nizam applied for a dissolution of marriage, it could be entertained by the District Courts and the High Court. These courts could, therefore, decide such matters by applying the principles of the Indian Divorce Act, 1869, as far as possible. Applying the *ratio* of this decision, I held that there was unimpeachable evidence of the husband having committed adultery on many occasions; and on some occasions of even having brought women to the house in the presence of the petitioner. I granted a decree of divorce.

Another case was under the Parsi Matrimonial and Divorce Act III of 1936. I was invested with the jurisdiction to try such cases. The case had to be tried with seven delegates. In this case, the delegates were several prominent personalities of high status, one of whom was Nawab Erech Yar Jung, a former *subedar* (Divisional Commissioner). The suit was undefended and, on the evidence, it was held by the delegates six to one, that the defendant inflicted grievous hurt on the petitioner. All the seven delegates were unanimous that the defendant had deserted the petitioner for at least three years before the filing of the suit. As I was bound under Section 46 of the Act by the findings of the delegates and since I myself, on the evidence, had reached the same conclusion, I granted a decree for divorce.

On the civil side, apart from money suits of a small-cause nature, there was one suit which was of interest. This was for partition filed by an impostor claiming to belong to a very rich *Vaisya* undivided Hindu Joint Family. It was filed *in forma pauperis* and occupied a great deal of the time of the Courts – shuttling up to the High Court and back to the District Court on the question of jurisdiction, *forma-pauperis* and other similar preliminary objections. The trial was conducted by me and on the several admissions made before me and in previous proceedings by the petitioner-plaintiff, I had no difficulty in dismissing the suit. I have always considered it similar to the famous case which created a sensation towards the end of the eighteenth century. An heir to the Tichborne peerage was drowned at sea in a shipwreck. Several years later, an impostor laid claim to the peerage as the heir who was believed to have drowned. Leading advocates appearing for both the parties demonstrated their great ability in the art of cross-examination. The claimant, after several days of severe cross-examination, absconded and ultimately, I think, was prosecuted for impersonation, deceit, etc.

and convicted.

There were several cases under the Rationing Act whereby a person was prevented from bringing into the city from outside more than five seers (a seer was less than a kg) of rice or grain without a permit. It appeared that some of the big merchants adopted the device of engaging young persons to bring five seers each and paying them some remuneration. These young persons who were so engaged would also bring one or two seers extra for their own and their families' consumption. Whenever there was a check at the check-post, they would be caught and prosecuted. All these young men arraigned as accused used to be convicted and sentenced to various terms of imprisonment by the magistrate. When they preferred appeals before me, I reduced the sentence till the rising of the Court. While doing so, I declared that I was not going to deal severely with the young offenders who were being used by big merchants. While no doubt all offenders must be deterred, the police must make an effort to catch the 'big fish.' As it happened, one day a case was filed against a big grain merchant and since this matter came up for hearing before me, the evidence was more than sufficient to convict the offender. I pronounced judgment on a Saturday and awarded him two years' sentence and a fine of two thousand rupees. He was immediately taken into custody to serve his sentence. The accused could file an appeal and an application for bail only on Wednesday on which day the matter went up before a judge, who prior to his elevation to the High Court, was practising in Secunderabad Courts. The accused was given bail. When the appeal came up, while upholding the conviction and sentence of fine, the High Court reduced the sentence of two years' rigorous imprisonment to the period of sentence already served by him, namely, five days. In any case, this had a deterring effect.

4

Elevation to the High Court

I used to see a good many young lawyers who, just after obtaining law degrees and completing their apprenticeship, would sit idly watching their Seniors conducting cases. Having myself been a Junior and having started practice at a very early age, I thought I should encourage these young lawyers who were regularly attending the Court. I directed the office to make the Jail Appeals and cases of habitual criminals available for inspection by the juniors to whom I had allotted each of those cases. The magistrates thought the criminals ought to get more than two years' imprisonment. They were committed to Sessions and their cases were fixed for hearing on Saturdays. I also requested Shri Dattatreya, Public Prosecutor, to help these young lawyers by facilitating them in taking me through the cases from First Information Report onwards. Many of these young lawyers were benefited by my directions to allot cases. One, at any rate, was appointed as a High Court Judge after I was elevated to the Supreme Court. I would spend sufficient time on each of the cases so allotted, encouraging these young junior lawyers to take me through the entire case from FIR onwards and after hearing their arguments and those of the Public Prosecutor, I would convict or acquit the accused. Most of the cases would end up in conviction. Where I confirmed the conviction, I reduced the sentence after passing some encouraging remarks about the performance of the young junior lawyers who argued the appeals. The junior members of the Bar appreciated the encouragement so extended to them.

With the limited experience I had as a Divisional and Sessions Judge, I was of the view that the functions of both an advocate and a judge were strenuous, and

if one adopted certain principles, it would facilitate a proper adjudication which would be both fair and just.

To my mind, for a person to succeed at the Bar or to discharge his judicial functions, a few important aspects have to be borne in mind. Firstly, without industry and hard work one cannot succeed however brilliant he may be. Those who are less brilliant will have to work harder. The same holds good for a judge who, apart from the hard work, has to undergo the strain of decision-making. Secondly, integrity and independence are essential. Without these, no person will inspire confidence, nor can he be useful. Thirdly, a case has to be studied thoroughly, facts digested and a chronological arrangement of events and circumstances made. I remember, when I was instructing Shri N. N. Sircar, Dewan Bahadur Aravamadu Iyengar was very keen to canvass the Hindu Law position of Dasiputra, but Shri N. N. Sircar told him, 'Dewan Bahadur, until we have mastered the facts, please don't bring Hindu Law within hundred miles of this room.' Fourthly, clarity should be our objective. Confusion could result through insufficient preparation while non-consideration of the salient issues could be fatal to the case and should therefore be avoided. We must be alert and a judge particularly so as he has to do three things at the same time. He must follow the argument and understand it; he must safeguard against being led astray and at the same time must make up his mind. Unless this process is followed, we start to become mentally lazy and procrastinate. We may say to ourselves, 'All right, let the arguments be finished. I will go through the record and make up my mind later.' This creates slackness and is responsible for exposing judges to a good deal of criticism because it has caused the pronouncement of judgments to be delayed for months. In some cases, even a year or so would elapse after the judgment is reserved. The longer we consider, the more difficult it is to arrive at a decision. The freshness of the arguments, the fine points of the pros and cons, and the initial momentum help one to come to an early decision. Procrastination robs the judgment of its merits.

Lastly, patience. This is a virtue which makes for a proper hearing and provides satisfaction to all concerned in the adjudication. Doubtless, arguments should not be allowed to be prolonged by repetitions. Subject to this, however, an advocate should be allowed to say what he has to. If we go on interrupting him or go on talking more than him, ultimately the hearing is prolonged because the lawyer can also insist on having his say. In my long years on the Bench, I don't think I exposed myself to the charge of not giving a proper hearing. At the same time I

never allowed a case to be prolonged more than was necessary.

I remember when I was a District Judge in Secunderabad, a lawyer with a very loud voice whose argument could not be stopped except to prolong it, was arguing a case. After some time, I closed my eyes and continued to listen to him. The lawyer, thinking that I was dozing off, said, Tf your honour is tired, I have no objection to the case being taken up tomorrow.' I immediately opened my eyes and said, 'Your remarks are improper. If I hear your arguments patiently, you say I am dozing off. If I ask you any question to clear my mind of any doubts, you say I am not giving you a patient hearing but am interrupting you. Have you not been arguing on these points?' I then recapitulated the points on which he was arguing.

He said, 'Yes, that is right' and apologised profusely. He was so upset that even after I had adjourned to the Chambers, he came in and apologised again. I said, 'I never carry into the Chambers what happens in the Court. I say what I have to say in Court which I did; so there is nothing to apologise about.' He seemed relieved.

After I took over and in view of the fact that India had become a Republic, I thought it would be appropriate to have the State emblem (the three lions) on the wall behind the dais where the judge sits so that the lawyers and the public could see it as they came into the court. I requested the Public Works Department to provide the emblem, which they did. The three lions were in ochre red with the words *Satyameva Jayate* inscribed in silver. A function was arranged at which the Hon ble the Chief Justice unveiled the emblem. Among the distinguished gathering, senior lawyers including Mr Mackinnon, K. C. and his Junior who were appearing in Kasim Razvi's appeal before the High Court were also present. I made an appropriate speech welcoming the Hon'ble the Chief Justice and guests and invited him to unveil the emblem. As usual, the Chief Justice made a stirring speech emphasizing the role of the Judiciary under the Constitution.

It may also be mentioned here that, under the Constitution, all appeals pending before the Judicial Committee of His Exalted Highness the Nizam, stood transferred to the Supreme Court of India. But since the records connected with these cases were all in Urdu, it would have taken a good deal of time and money to have them translated into English before they could be ready for hearing. The Chief Justice of India, Mr Justice H. J. Kania, and his companion judges of the

Supreme Court, however, decided to have an *ad hoc* Bench of Judges who knew Urdu to dispose of these cases in Hyderabad itself. Accordingly, a Division Bench of the Supreme Court comprising Mr Justice Mehar Chand Mahajan, the Chief Justice of the State High Court, Mr Justice R. S. Naik and the seniormost Judge, Mr Justice Khalil-uz-Zama Siddiqui was constituted to sit in Hyderabad and dispose of the appeals. The Bench sat in the High Court and disposed of nearly five hundred cases within four to six months. Mr Justice Mahajan was very quick and sometimes very brash when lawyers were not prepared or were not competent. As soon as a case was heard, he would then and there dictate the judgment. I remember being told by lawyers present in Court that when a lawyer, who was a junior for a long time of a well-known Senior, argued before the Bench, Mahajan J. asked, 'Which is the University that conferred the Law Degree on you?' Unaware of what was to come, the lawyer said, 'I am from Andhra University'. Then, Mahajan J. said that on reflection the University would regret having conferred the degree. The Junior was so taken aback that he could not reply. Meanwhile, Mahajan J. dictated an order dismissing his case. Mr Justice Mahajan 's visit and stay made big news in Hyderabad.

In the evenings, he used to go regularly to the Secunderabad Club to play tennis. He was a pleasant person to meet. In Court, however, every one of the advocates was careful in presenting his case before him. If any one of them was not prepared or wanted to make his little knowledge go far, woe unto him. In cases which the Chief Justice R. S. Naik or Mr Justice Khalil-uz-Zama or both could not hear, another Bench consisting of Mahajan and Fazal Ali JJ. and one of the two, the Chief Justice R. S. Naik or Khalil-uz-Zama, who was not disqualified from hearing it, would sit and dispose of the cases. In the few cases which involved substantial questions of law relating to the Constitution, they were either heard in Hyderabad with Kania, C. J., forming the Bench, or were transferred to Delhi to be heard and disposed of there by the Supreme Court. In this way, the entire arrears inherited from the Judicial Committee at the commencement of the Constitution were disposed of.

It may by way of digression be mentioned that I had as early as 1978 suggested to the then Chief Justice of India, Mr Justice Y. V. Chan- drachud, and the then Union Law Minister, Shri Shanti Bhushan that five *ad hoc* Benches presided over by a sitting judge of the Supreme Court of India be appointed to sit at five regions of India for reducing civil and criminal appeals pending in the Supreme Court; but Mr Justice Chandrachud told me that the Supreme Court lawyers

would not accept it. I said, we were not rendering judicial service for the benefit of the lawyers but for litigants. Today, the Supreme Court is burdened with over two lakh cases as arrears and all sorts of suggestions are made. But where there is no will, there is no solution.

One day, I had a telephone call from the High Court informing me that Mr Justice Khalil-uz-Zama Siddiqui wanted to see me during the lunch hour. I was unable to understand why he wanted to see me; but I did not have to wait long to know. When I went to see him the same day, he referred to a judgment of a bench comprising the two of us which I had written and with which he agreed. He said that the lawyer appearing for a party in one of the cases in which a similar point determined by us had arisen, had criticised it and said it was decided wrongly; so, he wanted to know what was the basis of my decision. I said : 'You were party to it and had agreed with me presumably after considering the reasoning as well as the basis'. He replied, I merely signed *it*'. I then told him that I had clearly stated the reasoning and the basis of the decision. It was for him and his colleagues to consider the correctness or otherwise; and, if they thought it required to be reconsidered, they could refer the case to a Full Bench. After this, I immediately left his chambers to be in time for the afternoon sitting. Only, I had to forego my lunch recess.

During the period I was in the sessions court at Secunderabad, H. J. Kania, Chief Justice of India, had visited the Hyderabad High Court. The Chief Justice, Shri R. S. Naik, suggested to the Chief Justice of India that he should visit the Secunderabad District Court to see how our district courts functioned. I received the Chief Justice of India and after taking him round and introducing him to the members of the Bar, we had a small meeting in my chambers at which the District Magistrate and Magistrates were present. Chief Justice Kania was very much pleased at the way all of us were functioning, and felt that the Secunderabad Courts had an efficient set of judges and magistrates. Towards the end, Chief Justice Kania made one important remark about the Judiciary and its structure which made a deep impression on me. He said, 'The British have given us a fine system of judiciary on a platter. No doubt, a little mortar is falling here; a little brick is coming out there. But don't destroy it by trying to interfere with the edifice. You may repair it or add to it or alter it somewhat, without destroying the structure as a whole'. I could never forget this sagacious and salutary injunction.

I was fortunate during my tenure as a Divisional and Sessions Judge to have won

the regard and respect of not only the lawyers and the litigant public but also the Executive. The Law Minister, Shri Sheshadri, who somehow did not seem to get on with the Chief Justice too well, was, I was informed, at any rate happy at the way I was administering justice in the Secunderabad Sessions Court.

Many officers who came here from other states in the wake of the Police Action of 1948 became close family friends. One of them was my contemporary at Cambridge where he had had a brilliant record. He was a Wrangler having obtained a first class first in Part II of the Mathematical Tripos. Thereafter he was selected for the I.C.S. He once met me in the Secunderabad Club and when he came to know I was in Hyderabad, asked me how was it that we had not met earlier. I told him I wanted to wait till the swollen heads of all those who came to rule Hyderabad became normal. According to him, when all of them were being chosen for service in Hyderabad as Civil Administrators after the Police Action, they were told there was no administration worth the name in Hyderabad, and that they would have to do their best to administer it. But after they came here, he said he was surprised to find that Hyderabad had a very good administration comparable with that of the rest of India and some of the administrators were second to none.

Before taking over as Divisional and Sessions Judge, I had expressed an adverse opinion when asked to comment on the proposed Special Tribunals Regulation, 1358 Fasli, by the Legal Adviser to the Military Government. But notwithstanding that opinion, the Regulation was promulgated. In Abdur Rahim's case *1951,* Hyderabad, 1, Full Bench); Abdul Raufs case (*ILR 1951,* Hyderabad, 342, Full Bench) and *Mohammed Hyder vs.State of* (ILR 1951, Hyderabad, 877, Full Bench) the High Court considered the matters arising under the aforesaid regulation. A Full Bench of the Hyderabad High Court in the second case, i.e., *Mohammed Abdul Rauf and others vs. State of Hyderabad* considered the question of prejudice to the accused by the three members of the tribunal who had considered the two cases earlier: the case of the murder of the journalist, Sheobulla Khan in August 1948 and the Bibinagar Dacoity case. The members of the tribunal had expressed their views in the earlier cases on both the aims of the Ittehad-ul-Muslimeen as well as about the eight witnesses in Sheobulla's case and the thirteen witnesses in the Bibinagar Dacoity case, holding in each of these cases that several of the witnesses among each set were reliable. In these circumstances, the Full Bench considered it unfair to the accused for the same members of the tribunal to try the cases of the accused. In

the third case, i.e., Mohammed Hyder ’s case, the full bench by a majority, Chief Justice Shripat Rao Palnitkar, and Mohammed Ahmed Ansari, JJ. (Srinivasa-chari J. dissenting) held that the Special Tribunals (Termination) and Special Judges (Appointment) Regulation, 1359 *Fasli* was unconstitutional in that the procedure under the regulation which followed the Special Tribunals’ provisions was discriminatory and accordingly the regulation was struck down. They also negatived the argument that since the regulation was a pre-constitutional law, it was valid and held that since the procedure therein prescribed was operating after the Constitution, it contravened the fundamental rights of equality of the accused under Article 14. In the first full bench case of *Abdur Rahim and others vs. Joseph A. Pinto,* two of the judges of the full bench, who were judges in the third full bench case, *Mohammed Hyder and others vs.State of Hyderabad,* had held earlier to this case that though some of the provisions of the Special Tribunals' Regulation 1358 *Fasli* were violative of Article 14, they were severed and the Tribunals’ Regulation was held valid since they were severable. In the end, most of the prosecutions against Ministers and high officers who were charged with murder, dacoity, etc., offences punishable with death and life imprisonment, were held to be unconstitutional and ultimately given up.

In 1951, the High Court of Hyderabad had, as a consequence of the promulgation of the application of Constitution to Part (B) States, placed the City Criminal Courts under my jurisdiction as the Divisional and Sessions Judge of Secunderabad with a direction to submit a report making suggestions and also to express my views in respect thereof. Accordingly, in my report, I had proposed the decentralisation of the administration of the City Criminal Courts and suggested that the courts be dispersed to different localities as they would be convenient to the prosecuting agencies as well as those involved in the case, the accused and the witnesses.

The Hon’ble Chief Justice R. S. Naik, in his speech delivered on 12 December 1951 while inaugurating the Divisional Courts, appreciated my report and the suggestions made therein in the following words: ‘It was brought to my notice that the machinery of the City Criminal Courts needed drastic reorganisation and reform. After each inspection certain improvements were suggested and carried out but all these did not fully satisfy the requirements of the Courts. I, therefore, asked Mr P. J. Reddy, the Sessions Judge of Secunderabad, under whose jurisdiction these Courts were placed by the recent reorganisation, to make a detailed inspection and report. In his report, among other things, he has

suggested dispersing of these Courts in different localities by decentralising the administrative machinery of the City Criminal Courts. Mr Reddy has not only made a thorough and systematic inspection and offered very useful suggestions but his keenness and enthusiasm in this matter have been of very great assistance to the High Court. The High Court has no hesitation now to accept his suggestion because by the application of the Central Laws, the legal difficulty in the way of the dispersing was removed (ILR 1952 Hyderabad, pp. i to v).

In or about December 1951,1 was informed that my name was being considered for High Court Judgeship along with that of another district judge who was the next to me in seniority. One day, the Chief Justice informed me that he was proposing two names, one of which was mine. While making his recommendations he said, ‘T need two judges to dispose of the increasing number of cases being filed. If the Ministry of States, for any financial reasons, wants to sanction only one appointment, Jaganmohan Reddy, if appointed, will do the work of two judges/ I was very grateful to him for his unreserved confidence and the manner in which he had sent the proposal. It appeared that an envious and jealous lawyer, when he heard that I might be appointed, raised an objection on the ground that I had not completed ten years of practice; nor ten years as District and Sessions Judge; and, consequently, the provisions of the Constitution which requires a person, who is to be appointed as a Judge of the High Court, should either have ten years of practice or ten years of service as a Sessions Judge, would not be complied with. He was merely considering and interpreting the provision of Article 217(a) and (b) ignoring the explanation (a) and (b) altogether in a manner as if the framers made this qualification applicable either to the practising lawyer or to a District Judge but not to a District Judge who had been recruited directly from the Bar, who had both practised and served as a District Judge. On this interpretation, according to him, the essential requisite in my case was not satisfied. I was one day called by the Home Minister who told me about this objection raised by the lawyer who had come to see him and wanted to know what my views were. I told the Home Minister that this objection could not be valid because the Constitution required a person of experience – whether as a practising lawyer or as a District and Sessions Judge – and the ten years' experience prescribed by the Constitution as qualifying a person to be appointed as a Judge of the High Court is the aggregate of these two and not t© be considered individually as if they are mutually exclusive. Clause(2) of Article 217 with the explanations makes this clear. Although the Home Minister could have referred the matter to the Advocate

General, he did not, perhaps, want to give it unnecessary publicity or do this without discussing the matter with the Chief Justice. The Home Minister was in favour of my appointment and he asked me ‘if I could get an opinion on this point’. I could only think of Shri Alladi Krishnaswami Iyer whose Junior I was. I asked my friend, Shri C. Krishna Reddy, who was going to Madras, to get Shri Alladi’s opinion on this aspect. When I informed the Chief Justice about this, he was very angry and said that people who were envious were always bent on mischief, and raised such objections. He expressed a view similar to that expressed by me to the Home Minister and said, ‘Does the Constitution want an experienced man or an inexperienced man? If a person has nine years’ practice before the Court and has served for nine years as Sessions Judge, is he less preferable to a person who had only ten years of practice at the Bar; or, had put in only ten years of service as a District and Sessions Judge? The whole thing is absurd’. In any case, I told the Chief Justice that since the Home Minister wanted me to get an opinion, I had sent a request to Shri Alladi to favour me with his opinion. Krishna Reddy brought a letter from Shri Alladi who expressed the same opinion as all of us had done in this matter. In fact, Krishna Reddy informed me that Shri Alladi was so angry that, at first, he refused to give his opinion. He told Krishna Reddy, ‘Do these people think that we, who drafted the Constitution, were stupid people?’ He refused to give an opinion on a matter which was so clear. Krishna Reddy pleaded with him that since the higher authorities wanted an opinion on this matter to enable them to take further action, he could give his valuable opinion which would help me. On this, Shri Alladi agreed to give a letter. On producing this, the matter concerning my appointment as a High Court Judge went through. Evidently, the *Raj Pramukh* on the recommendations of the Home Minister as well as the Chief Minister, sent my name to the President through the Ministry of Home Affairs, Government of India, New Delhi to the Chief Justice of India and ultimately to the President of India. After this, I did not mention this matter to anyone. One day Shri Vellodi’s (the Chief Minister’s) Personal Assistant who met me one evening in a cinema theatre, very quietly passed on the information, that my name was sent up to the Government of India.

One day, in the second or third week of January 1952,1 met the Chief Secretary, Lakshman Rajwade, I.C.S. at the Secunderabad Club. As his car had not come, he asked me for a lift back home. While driving back home, he asked me what my date of birth was: I was rather surprised at this question and asked him what he wanted it for. He said the Chief Minister wanted him to get this detail. When I

asked him why the Chief Minister wanted this information, he disclosed the reason. When I gave my date of birth, Rajwade said, ‘Good God! I would not like to be tried by so young a person’. I promptly replied ‘Perhaps you might be more unfortunate if you were not tried by me’. He laughed and the matter rested there.

After my name was proposed, I kept my fingers crossed because, at that time, C. Rajagopalachari was the Home Minister of the Central Government and I apprehended that he might consider me to be too young for a High Court judgeship. However, the matter went through easily without any hitch because the Home Minister and the Chief Minister of Hyderabad State had already okayed my appointment. Early in the morning of 12 February 1952,1 was woken up by the constant ringing of the telephone at my Saifabad residence. When I got up and took the phone, I was very much surprised to find that it was a reporter of the Press Trust of India who informed me that that morning’s news had flashed my appointment as a judge of the High Court of Hyderabad, as from the date I took charge. I immediately rang up the Chief Justice who said he too had received a telegram about this the previous night. Neither he nor I, nor, for that matter, any of the officers in the Secretariat knew how I had to take charge of the new assignment. The consensus was that I should take charge only after the Warrant of Appointment was received from the President of India. Consequently, I attended the Secunderabad Court till 15 February; and on 16 February 1952, when I received the Warrant of Appointment duly signed by the President of India, Rajendra Prasad, I went to the High Court and presented it to the Registrar who, in turn, placed it before the Chief Justice. A ‘Memo’ was prepared with respect to my taking charge just as is done in the case of a Gazetted Officer of the State Government. The officer giving or handing over the charge would say, ‘I have given charge’, and the Officer taking over charge would say, ‘I have taken charge’, and the Officer giving charge and the one taking charge would then subscribe their signatures to that form. This giving and taking charge was on 16 February 1952, which was a Saturday and it appeared that I had already become a Judge of the High Court of Hyderabad although, under the Constitution, the appointment would take effect only on my taking the oath of office as prescribed under the Constitution of India. This was completed on Monday, 18 February 1952, before all the judges sitting in the Full Court and in the presence of the Members of the Bar. It was only after the Chief Justice administered the oath of office and after my repeating the said oath immediately after him, after he and I signed the form with the oath, that ‘oath of office’ could

be said to have been administered to me. The Hon'ble the Chief Justice on behalf of himself and his colleagues on the Bench and Shri Govind Das Mehta, President of the Hyderabad State Bar Association, welcomed my appointment to the Bench. These speeches are reported in ILR 1952 Hyderabad under the heading ‘Speech delivered by the Hon'ble the Chief Justice, R. S. Naik, on the 18th February 1952 (pages (i) to (viii)’. The Hon'ble the Chief Justice was gracious enough to say this about me. ‘I am very happy that the appointment of Shri P. J. Reddy has been so popular among all sections of the people, that both the members of the Bar and Bench have such a high regard for him and that he enjoys the confidence of the Bar in so large a measure.

‘Shri Reddy has worked before as a High Court Judge. But his present appointment has a significance and importance of its own, for he is the first Judge of this High Court to be appointed by the President of the Republic of India by a warrant under his hand and seal. As you all know, under the Constitution, the High Court has been given an independent status and it is the guardian of democracy and a custodian of the Constitution itself. The responsibility of discharging the duty and maintaining the dignity of the office is heavier on a Judge of the High Court now than ever before....’

Shri Govind Das Mehta who spoke in Urdu, after narrating my achievements and my qualifications, welcomed me with great warmth and affection. An excerpt of the English translation of his Urdu speech is at pp. iii and iv of ILR 1952 Hyderabad. Govind Das Mehta said:

‘In 1948 when he was appointed a Judge of the High Court, he was working at the time as a Deputy Secretary to the Legal Department. As a Judge he discharged his duties for nearly 10 months but after the Police Action, due to the abolition of the Legislative Assembly and Judicial Committee consequent upon the reversion of the Senior Members whereof to the High Court, he had to revert to his substantive post. In 1950 he was appointed as a Sessions Judge for the Secunderabad Court where the efficiency, industry and integrity with which he discharged his duties is well known Although at the time of such appointments, as in other civilised countries, we in this State also prefer the appointment to be made from the members of the Bar for which the Bar Association has always raised its voice high, we cannot treat him as apart from the Bar since he not only belonged to the Bar but a short period only has elapsed since he was separated therefrom.

On this occasion, it will not be out of place to make a mention of the fact that he has considerable experience not only of the difficulties with which the legal profession is faced but also experience as a High Court Judge, if not much, at least sufficient, and for this reason it will not be out of place to hope that in recognising the difficulties of the Bench and the Bar in the present democratic times, he will try to surmount them in the most efficient manner... .'

While thanking the Chief Justice and my colleagues, Shri Govind Das Mehta and the members of the Bar, I stressed the ideal of equality of all citizens including the State itself before the law and the mutual confidence which is begotten of the consciousness that equality can only be realised by the independence of the judiciary which has been amply guaranteed under the Constitution. I reminded myself of what, according to the Anglo-American concept of judicial ethics, the ideal concept of a Judge should be. I then referred to that ideal which I stated as follows:

'In every particular his (the Judge's) conduct should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise and indifferent to private, political or partisan influence; he should administer justice according to the law, and deal with his appointment as a Public Trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.'

Again, regarding the contribution of the Bar, I said:

'It should also be noted that it is the industry and intelligence of the members of the Bar in the discharge of their functions which will leave its indelible impression on the quality and clarity of the judgments of the Bench. It should therefore be our mutual endeavour to constantly and actively strive to render the judgments of this High Court of such merit and standard as to evoke respect in our country.'

I ended my speech of thanks thus:

'If we can keep these two basic principles before us in the discharge of our respective functions, there will, in my view, develop between us an atmosphere of complete objectivity and great cordiality, in which not only the interests of justice will be greatly enhanced but the ends of justice will be met. Thus we will be able to build up and maintain sound traditions which will uphold the majesty

and rule of law, the main pillar, if not the bastion, of democracy and leave to posterity the *summum bonum* of our joint efforts.'

Whether I fulfilled the objectives set before myself, or to what extent the above objectives were fulfilled can be ascertained by the reader, from what is narrated hereafter in these reminiscences.

PART II

5

As a Judge of the High Court

After the swearing in I sat with the Chief Justice R. S. Naik who was known for his punctuality. From my chamber which was at the farthest end from the Chief Justice's chamber I would be in his room five minutes before 10 a.m. and after lunch at five minutes before 2 p.m. On the stroke of the bell we would be on the Bench. On one occasion a judge sitting in a Bench with the Chief Justice was late in joining him. The Chief Justice nonetheless on the stroke of the bell went up to the Bench and sat singly reading the case papers. The judge who came late joined him with an apology and it was only then that the bench began to function. After this the judge never again came late.

Under the Hyderabad High Court Act (*Quanun-e-Adulatul-Alia*),the Chief Justice can nominate an administrative judge and the bench constituting him and the Chief Justice would be the administrative bench. All administrative matters would be routed through the administrative judge to the Chief Justice, though the Chief Justice could refer any matter to a committee of judges or of the whole court for a decision on any administrative matter. Although Justice Shripat Rao Palnitkar was nominated by the Chief Justice as the administrative judge, after my appointment the Chief Justice also consulted me in administrative matters. Justice Shripat Rao welcomed my participation. I remember, on one occasion the Chief Justice sent for me at lunch time. He was quite upset at the Government changing the proposals of transfer of district and sessions judges sent by the High Court. When the Registrar on the directions of the Chief Justice enquired from the Chief Secretary, an I.C.S officer who had come to Hyderabad after the Police Action, how this could have been done, he was informed that since under

Article 233 of the Constitution the appointments, postings and promotions of district judges were made by the Governor or *Raj Pramukh* (Hyderabad) on the recommendations of the Government of the State in consultation with the High Court, the government was free to accept the High Court's proposals or effect transfers which were not in accordance with the recommendations of the High Court. This attitude of the Chief Secretary was certainly confrontationist. As such, the matter had to be handled with tact and firmness. The stand taken by the Government was totally unwarranted and arbitrary. When the High Court recommended the transfers, the government, if it did not agree with the High Court, could make its own suggestions to the High Court in respect of some or all the transfers and state its reasons. If the High Court insisted on its proposals then it could have been said that it was consulted. It is only then that the Government could contend that the provisions of the constitution under Article 233 had been complied with. I suggested to the Chief Justice that while the stand taken by the Government was totally unjustified and improper, the best way would be to write to the Government setting out its views and informing it that no consultation had in fact taken place with the High Court, and indicate that the High Court had proposed the transfers with its knowledge of the kind of work in each district, and the capacity and ability of each district judge, which it alone was able to assess. If the government, without any valid reasons or without giving any reasons whatever for not agreeing with the transfer proposals, effected transfers contrary to the proposals made by the High Court, the High Court would be obliged to withdraw all the civil and criminal cases to itself under the powers vested in it under the civil and criminal procedure codes from the judges transferred by the Government contrary to the High Court's proposals. On such transfer of civil and criminal cases these judges would then not have any cases to deal with. The Government should be informed that the responsibility for creating such a situation would rest squarely with the Government. The Chief Justice and Justice Shripat Rao agreed with my suggestion. When a letter on the above lines was sent by the High Court, the Government without any further ado accepted the transfers proposed by the High Court. The ill-advised, immature and arrogant action of the Chief Secretary, I believe, made the Government reconsider its earlier decision and accept the High Court's proposals. Thereafter the High Court had no other problems on this score. The Chief Justice was quite satisfied that confrontation with the Government had been avoided.

Earlier also there was a confrontation when the police and the investigating

agencies were peeved at the remarks made by the Chief Justice during the hearing of the appeals of Kasim Razvi's and other accused against their conviction by the Special Tribunal. To get even with the Chief Justice his car was not allowed by the police to reach him after the Republic Day parade, while the cars of the Chief Minister and all other Ministers were sent for, and they left, keeping the Chief Justice waiting till the last. When the Chief Justice took up this matter and complained of the deliberate action of the police to show disrespect to him, he was informed that the police were not able to recognise the car of the Chief Justice and because of this it was delayed. The police then made a suggestion that in order to avoid a repetition of such situations, there should be some sign or indication on the car for the police to know that the car was that of the Chief Justice. The correspondence in this regard was going on when I assumed office. When the *jamedar* of the Chief Justice in his liveried dress was in attendance on him, and the driver of the car also was in his uniform, for the police to say they could not identify the car of the Chief Justice was a trumpery excuse for what was a deliberate act of insult. It was surprising that the government accepted such an excuse put forward by the police as valid and an excusable act. When I was consulted I suggested that the Chief Justice and judges of the High Court should sport a flag when they visited the court or were on official duty or when attending official functions, so that even assuming the excuse of the police as valid, the cars could be easily identified. When the Chief Minister and other ministers of the government could sport flags, it would be equally desirable for the Chief Justice and the judges to do so. While this matter was being considered the Chief Justice retired but it was subsequently taken up by L. S. Misra who succeeded Shri Naik in October 1952 as a permanent Chief Justice.

I enjoyed the judicial work and had the advantage of sitting with experienced judges most of whom as senior judges on the Bench assigned writing of some important judgments to me. Chief Justice Naik was quick and I was glad I could keep pace with him. I sat with Shripat Rao in full benches in some of which I wrote separate judgments. In one important five-judge full bench case, *Ahmedunnisa Begum vs State* (AIR 1952 Hyderabad 183) heard by Siadat Ali Khan, Mohammed Ahmed Ansari, Srinivasachari, Vithal Rao Deshpande JJ. and myself, I wrote a separate judgment. In this case, on the death of a big *jagirdar*, the Nizam by his *firman* appointed a commission to enquire into the succession of the deceased. The question was whether the action taken by the Military government after it took over the administration in September 1948, in getting

the Nizam to set up another commission (by his *firman* dated 22 Novemberl948) was valid. Though the commission was lawfully set up by the Nizam under his *firman*,it gave its report after the Constitution came into force, on which the Chief Minister passed orders accepting the recommendations of the commission. When the order of succession was challenged, the High Court had to determine whether it had jurisdiction to go into the question. The majority, Mohammed Ahmed Ansari, Siadat Ali Khan and I held that after the adoption of the Constitution the Nizam had no prerogative to sanction the recommendation of the commission appointed under the Jagir Regulation Act which was enacted prior to the Constitution. Since the order was quasi-judicial we held that the High Court had jurisdiction to issue a writ of *certiorari* to quash the order of the Chief Minister.

In another Muslim law case relating to the right of preemption which was prevailing in the whole of the State of Hyderabad, the question was, whether a person having the right of preemption had exercised it validly by complying with the two essential requisites for the exercise of that right. These two requisites were: Firstly, a neighbour who comes to know of a sale of an immovable property over which he has a right of preemption, must without loss of any time, assert that he wishes to purchase the land or house as the case may be. This right is called *talab-e-mawasibat.* Secondly, he should make a formal demand either in the presence of the seller or the buyer. If the seller is in possession or on the premises of the property which is the subject of the sale, a demand is made claiming his right before the seller or the purchaser it is called *talab-e-ishhad.* In dealing with this aspect, while pronouncing the judgment of the bench consisting of Chief Justice Naik and myself, I went into the relevant provisions of the Muslim Law and held as above, namely, that when a person asserts the right before the seller in possession and before the purchaser and in the presence of witnesses there was no need to hold that each of these *talab-e-mawasibat* and *talab-e-ishhad* should be separately complied with. In such an event the preemptor is deemed to have exercised his right (*Somaji vs. Narhar,* AIR 1952 Hyderabad 159). I also had the opportunity of writing a judgment of the Bench in *Murti Rao vs. The State of Hyderabad* (ILR 1952, Hyderabad 581) in which an accused who was prosecuted under the Special Tribunal Act, was transferred to the Sessions Judge under the Special Tribunal (Termination) and Special Judges (Appointment) Act. The question was did the Sessions Judge have jurisdiction to try the case? We held that as the initiation of the case before the tribunal itself was without its being committed by a magistrate, the Sessions

Judge to whom it was transferred to try the case under the Criminal Procedure Code could not without its committal, exercise jurisdiction to try the case and convict the accused. We therefore quashed the conviction.

There were several important cases some under the Income Tax Act and some under the Excess Profits Tax Act which were posted to a Bench of which I was a member. Most of the judges of the Hyderabad High Court were not conversant with these laws and since I had as a lawyer practised in this branch of the law, the Chief Justice thought I should be a member of the Bench dealing with such cases.

After the summer vacation, Chief Justice Naik retired on 16 June 1952. The Chief Justice was one of the towering personalities of the Court, in whom lawyers and public had great confidence. He was scrupulously fair, courteous and conscientious in the discharge of his office. I remember one instance before I joined the court which shows how his approach was fair and impartial even in administrative matters. The Selection Committee of Judges presided over by the Chief Justice were interviewing candidates for the selection of *munsifs.* As was the practice, judges of the committee would be approached by influential persons known to them to recommend cases of the candidates being interviewed. Even the Chief Justice may have been approached. At the interview, the Chief Justice used to ask every candidate, 'Who has recommended your case?' The candidate would be embarrassed and so would the judge or judges to whom his case was recommended. When the answer to this question was insisted upon the candidate would give out the name or names of the person or persons who recommended his name. In this way those whose cases were recommended would be noted. The selection thereafter would be strictly on the basis of merit and the candidates would realise that canvassing would be a disadvantage.

Naik Saheb's successor was Justice Shripat Rao but he was appointed only as acting Chief Justice on 17 June 1952. It would appear that the Government of India was not inclined to consider him for appointment as permanent Chief Justice and had evidently decided to bring a Chief Justice from a Part A state to ensure uniformity in the standards of the functioning of the High Courts, since the judges of Hyderabad High Court were appointed by the erstwhile Hyderabad Government. While I did not agree with this postulate, there was nothing that I could do. In fact neither the Government of Hyderabad nor the members of the Bar pressed for a different approach.

Shripat Rao was an acting Chief Justice for four or five months until L. S. Misra, a judge of the Allahabad High Court, presiding over the Lucknow bench was appointed as permanent Chief Justice and assumed office in November, 1952. Justice Shripat Rao had by then not changed the spelling of his name to SCHRIPATRAU (astrologers had said that the spelling Shripat Rao was inauspicious for him to become Chief Justice). Nonetheless he insisted that in the judgments reported he should be referred to as Chief Justice and not as acting Chief Justice.

Most of the senior judges did not like an outsider being appointed. In those days supersession was not thought of, though before independence this was achieved by giving extension of tenure to junior judges while senior judges were allowed to retire, on reaching the age of 55. This way a junior judge was made Chief Justice while as a matter of fact by the above arrangement he became the seniormost judge at the time of appointment, so that no one could say he superseded a senior judge. After Shripat Rao became acting Chief Justice, though I was the juniormost among judges, he nominated me as the administrative judge to look after administrative matters pertaining to the judiciary, though under Article 227 of the Constitution the superintendence over all subordinate courts is vested in the High Court as such. In so far as administrative matters pertaining to the High Court were concerned, under Article 229 of the Constitution, the Chief Justice alone or such other judge or officer of the court as the Chief Justice may direct was empowered to deal with them. My nomination as an administrative judge was probably made either because none of the senior judges were willing to take up this responsibility, during the tenure of the acting Chief Justice or because the acting Chief Justice thought that I had experience in dealing with administrative matters, as Deputy Secretary Law, as Divisional and Sessions Judge and as judge of the High Court during the tenure of the former Chief Justice R. S. Naik.

During the period I was the administrative judge of the High Court, I had to deal with all matters concerning subordinate and higher judiciary including judges holding such posts.

Towards the end of August and early September the *Mulki* riots took place. The term *Mulki* denoted those domiciled in Hyderabad state. The resentment of the local people against the non-*mulki* (outsider) officials resulted in riots in the city of Hyderabad, Secunderabad, Bolarum and in other parts of the state. In the city itself, these took place on 3 and 4 September on the road passing by the High

Court and the City College. Students were also involved and the police resorted to firing to disperse them. While Md. Ahmed Ansari and I were sitting in a Bench and Gopal Rao Ekbote was arguing a case before us, suddenly tear-gas bombs were lobbed to disperse the students, and the gas entered the court room. Those in the courtroom found it difficult to breathe, so we adjourned the court and went into our chambers. There was also firing in Afzalgunj near the entrance to Osmania Hospital. In the firing that took place to disperse the mob, it was alleged there were a few deaths and some persons were injured. Soon thereafter on 5 September when I opened my newspaper I found to my great surprise an announcement by the Chief Minister that the Government had appointed me as Chairman of a commission to enquire into the firing in the city of Hyderabad on the 3 and 4 September. Thereafter, I was inundated by telephone calls congratulating me on my appointment. I did not understand what there was to congratulate me about. Perhaps, as I was the juniormost judge, my being called upon to conduct an onerous enquiry must have been considered a matter of privilege. It was, however, embarrassing for me, as there was a chance that my senior colleagues might misunderstand my appointment. In any case I was not consulted nor was my acceptance sought. In fact, I was rather peeved that I was appointed without any consultation or consent. Sometime after breakfast I received a call from the Chief Minister Shri Burgula Ramakrishna Rao saying that he wanted to see me. Over the telephone itself I protested against this practice of announcing the appointment of a High Court Judge without his consent. I said I would not agree to head the commission. His explanation was that they had no time to consult me and take my consent. The situation was so critical that that night itself the Cabinet decided to have a commission to enquire into the riots and I was considered to be the most suitable person for the task. After this he woke up the Chief Justice and took his approval for my appointment and thereafter the President was woken up and after his approval, an announcement was made without delay so that the prevailing tension would ease.

I told the Chief Minister that when he could wake up the Chief Justice he could as well have woken me up and informed me. He admitted that that was an omission and pressed me to accept the assignment as it would ease a serious situation. In the circumstances I said I would accept it on two conditions: firstly I would hold the enquiry in public and secondly that I would hold it in the High Court itself. He agreed to both these conditions and a notification was issued by the Government, on 9 September 1952. The terms of reference were

communicated to me by the Chief Minister by his letter dated 10 September 1952, received by me on the following day. This letter stated that the scope of the enquiry would cover all the circumstances which culminated in the incidents of firing on 3 and 4 September in the city of Hyderabad, as well as the justification therefor. The students' protest might also be enquired into as far as might be deemed necessary for the purpose.

I may here mention *en passant* that since the erstwhile Nizam's state which had joined the Indian Union and had become a part of the Republic, was for the first time functioning as a democracy after elections, the government of Burgula Ramakrishna Rao was given an experienced adviser for some time. Shri M. K. Vellodi, I.C.S. who till the appointment of Shri Ramakrishna Rao's ministry was the Chief Minister, was appointed as the adviser to the government and functioned as such for a year till March 1953. It was probably on his advice that I was chosen to head the commission to enquire into the disturbances.

These disturbances arose out of the growing frustration of the people of Hyderabad consequent on the wholesale import of officers and staff from the neighbouring states, namely, the composite states of Madras and Bombay, and other states like Madhya Pradesh, Uttar Pradesh, etc. The behaviour of the personnel from Madras (including Andhra region) was the worst. The Chief Minister of Madras in order to get rid of those found to be not up to the mark either in efficiency or integrity or in the manner of their behaviour, took the opportunity to send them to Hyderabad. In contrast the states other than Madras chose and sent their best personnel. These officials did not cause any trouble but those from the composite Madras did. The people of Hyderabad were used to being dealt with in a decent and cultured manner by those exercising power.

Though the people of Hyderabad state welcomed the Police Action as it liberated them from the autocratic rule of the Nizam, they soon became disillusioned because of the behaviour of a large section of the non-*mulki* officers and staff (i.e., those who were not domiciled in Hyderabad). Apart from this, the students became apprehensive of their being deprived of jobs by non-*mulkis.* In this situation as soon as a democratic government duly elected under the Constitution was installed in March 1952 there were expectations that the new government would take steps to ensure only *mulkis* being appointed to vacant jobs in Hyderabad. They found that *non-mulkis* were producing bogus *mulki* Certificates and getting jobs which gave the *mulkis* a feeling of deprivation.

It appeared that on 26 July 1952, an Action Committee was formed by representatives of schools and colleges. The first strike of the students commenced on that day when three to four thousand of them went in procession from Hanamkonda Crossroads to Subedari (Collector's Office) in Warangal. It appeared on 28 July 1952 an action committee was formed consisting of representatives of each school and college and one of them was appointed convenor. The action committee then sent a resolution dated 28 July 1952 to the Chief Minister which he received on 6 August 1952. The resolution demanded the appointment of a subcommittee of the Cabinet to examine the *mulki* rules and requested the Chief Minister to issue a press communique announcing the aforesaid decision. On their request being granted the action committee promised to call off the strike. The Chief Minister visited Warangal on 22 August 1952 and after meeting the student representatives promised to take action after he went to Hyderabad. After meeting the Chief Minister, the action committee held a meeting the same day and wrote to him on 24 August 1952 intimating him that if a subcommittee was not appointed before 27 August 1952 and a government communique was not released they would start a general strike and continue it all over Telengana from 27 August 1952. The Chief Minister through the Collector communicated the acceptance of the demand and wanted the action committee to be informed that a communique was also issued. But due to the delay in communicating the information to the action committee that night, the strike could not be called off. The students took out a peaceful procession on 27 August.. Thereafter all schools and colleges began to work normally. Unfortunately about fifty to hundred students did not attend classes and stayed in the compound. They indulged in violent activities such as pelting stones, etc. which led the law enforcing agencies to make a cane charge, with the object of chasing the students out of the compound. Though it was claimed that none of the students were injured, the students stated otherwise. This gave rise to a complete *hartal* the next day not only in the city of Warangal but also in other places like Khammam, Mahboobabad, Yellendu, Nalgonda, Miryalaguda, Bhongir, etc.

1 September was a holiday for Bakrid and so on that day there were no strikes. The Commissioner of Police, Shri Shivkumar Lal, H.C.S. (who for sometime after the police action was Home Secretary) broadcast through microphones an appeal to the parents requesting them to warn their wards not to resort to violence, not to misbehave and not to indulge in an indisciplined manner failing which the police would use force against the offenders.

On 2 September students went on a rampage shouting slogans such as, “Non-mulkis Go Back,” “Idli Sambar Ghar Ko Jao,” “Students Union Zindabad”, “Police Murdabad”. The strike from 30 August 1952 to 2 September 1952 had involved all the colleges, schools and educational institutions throughout Hyderabad and Secunderabad.

The incidents that took place severely affected the law and order in the city of Hyderabad. By a communique prohibitory orders were issued on 3 September 1952. There were incidents at the city college and Pathergatti and on 4 September there were incidents at Afzalgunj which forced the police to resort to the firing. All this was set out in the police version before me (see pages 11 to 15 of the report). It was stated that two persons had died in the firing on 3 September and in the firing on 4 September four persons had died. The number of persons reported injured on 3 September was 147 and the number of policemen injured on 4 September was 104. In all, 74 rounds were said to have been fired on 4 September and 45 teargas shells were lobbed.

Before I began my inquiry I caused a notification to be issued on 13 September informing the public and all those concerned that the inquiry would commence on 19 September. This notification also specified the court hall of the High Court where the inquiry would be held. It also informed that the inquiry would be a public enquiry to which admission would be regulated by passes issued by the Registrar. This was because the accommodation available in the court hall, though as big as the Chief Justice’s Court, was limited.

It was also notified that any person wishing to give evidence on matters within their knowledge which would form the subject matter of the inquiry could send his name and address to the Registrar by 22 September 1952. Those intending to take part in the proceedings, if desirous of making any representation, could see me in my chambers on 18 September between 2.00 and 3.00 pm.

By giving a programme and holding the enquiry from day to day, beginning some time at the end of October, I was able to complete the inquiry in a month or so and send a comprehensive report to the government on 28 December 1952. The report had annexures of which four were plans showing places where crowds had collected and where firing took place both on 3 and 4 September. About one hundred witnesses were examined. They included, IGP Monappa, the Commissioner of Police Shivkumar Lal, the Deputy Commissioner or Police, Sunderam Pillai, Brigadier Subbaiah, the Deputy Inspector General, Hyderabad

State Reserve Police (HSRP), the Collector, officials and others who were witnesses to the riots and had taken part in pacifying the crowds. The students, the Principal of the Nizam College, Shri Ramlal and the Chief Minister who was also present on 4 September at Afzalgunj were examined. The huge mob which had gathered on both days did not consist exclusively of students. The majority appeared to be antisocial elements, *goondas,* troublemakers, former *razakars,* etc. who were bent on creating a disturbance and overawing the law-enforcing agencies. The police in the initial stages were unable to control the crowds and when stones were thrown at them some of the police, it appeared, had taken to stone-pelting. The riots could not be quelled. Both the Commissioner of Police and the Inspector General of Police, who had denied that some policemen had resorted to stone-pelting in their evidence, admitted to these incidents but sought to downplay the affair by stating that only one or two of them had indulged in it. The police had found it difficult, as I said, to control the crowd because men in public life including the Chief Minister who were present on the occasion were trying, with the best of intentions, to pacify the crowds. V. D. Deshpande and Omkar Parshad of the Communist Party, Dr Jaisooria Naidu the son, and Ms Padmaja Naidu, the daughter of the national leader, Mrs Sarojini Naidu, Shri Dhage, Dr Melkote, Shri Baqar Ali Mirza, Shri Venkatswami, etc. were present and were witness to the occurrences. Neither in statements filed on affidavits nor as witness giving evidence before me was there any denial that rioting had taken place both on 3 and 4 September. I even called the Chief Minister, Shri Burgula Ramakrishna Rao, and examined him.

I do not propose to deal in detail with the number of incidents or the evidence produced to support or deny the various allegations made about the 3 September firinbg., I observed that some of the leaders who gave evidence were not free from blame. I commented that when tempers are frayed and passions are aroused a grave responsibility rests on persons who assume to guide the people, to do nothing either directly or indirectly by speech or action to incite or inflame crowds, or exploit such situations to subserve their political ends. Regarding the incidents on 4 September, on the evidence of those who spoke about what actually took place on that day at Afzulgunj, I was obliged to say: ‘The evidence of the witnesses is politically influenced by what they heard at the time or subsequently, rather than what they themselves actually saw. Even the witnesses including high police officers such as the IG of Police, the Commissioner of Police, etc. tried to confuse what they came to know with what they witnessed, without trying to separate the two at the time of giving evidence. About this I

observed: ‘Some of the witnesses have even coloured their evidence by mixing fact with fiction to suit their particular viewpoints’. In the face of some of the incontrovertible facts, both the IG of Police and the Commissioner of Police sought to justify their inaction by stating that they had not enough police personnel to control such a huge crowd as that which had gathered on 4 September at Afzulgunj nor could they get sufficient police from the districts within five or six hours. This was not, however, a true statement, because they admitted that there was with them at the time a force of 4000 with which they could have easily enforced curfew, and could have also controlled the crowd on 3 September. In view of these admissions and prevarications, I left it to the appropriate authorities to enquire into this matter and issue such instructions as were necessary to provide for future contingencies.

My findings were that (i) at the time of first firing at Afzalgunj there was a lack of coordination between the public leaders and the officers and persons in command of the police and that the firing was not fully effective and (ii) there had been lack of firmness on the part of the police at crucial moments. It was, however, difficult to blame the police alone for the state of affairs that prevailed because the public leaders, no doubt with the best of intentions, were acting in a manner which militated against the exercise of initiative by the police. The abortive parleys of the public leaders on the 3 and 4 September with an unruly and unreasonable mob bent on having its own way, instead of achieving the object of dispersing the mob, encouraged it in its acts of lawlessness. This had tended to wrest the initiative from the police for taking timely and appropriate action. In short the inaction of the police at psychological moments on the one hand and the abortive intervention of the public leaders on the other, had the effect of making the crowd persistent in its unreasonable demands and emboldened it to commit acts of violence with impunity. These and other comments were made by me in the report but it is not necessary to advert to them here. The two questions to which I addressed myself as requiring determination were (i) was it necessary to resort to firing? and (ii) was the amount of force used commensurate with the requirements of the situation and no more? On the first question after considering the evidence, I held that there was no other way than to resort to firing to disperse the crowd which was adamant and aggressive. The leaders of all parties had appealed to the crowd in vain. The crowd was very large, some putting it at about 40,000. There was no doubt that the crowd was a very big one, determined to take out a procession and was unwilling to disperse. It had burnt a wireless van and was pelting stones so

heavily that police officials were injured and there was danger of the police station being attacked and overpowered. There is no doubt that in these circumstances firing had to be resorted to, particularly when the *lathi* charge and tear gas had had no effect upon the crowd. As regards the second question I held that once the police was determined to meet the situation to restore peace they started firing in a controlled and restrained manner because of which the crowd began to disperse and once it did so the firing had stopped.

It became apparent from the enquiry that students start some agitation based on real or imaginary grievances which is later exploited by political parties, or the political parties start some agitation and then utilise the students to further it. I therefore cautioned the students, their teachers and all those responsible for their education and upbringing, to bear this in mind and do their best to instill into them a desire to conduct themselves in an orderly manner. With Justice Dixit I also held the view, that the distressingly prevalent disposition amongst the youth of the country to create disorder on the slightest pretext is a danger corrosive to the fabric of democracy. It is a threat to the high hope of making India one of the great countries of the world. Whatever be the form of government the claims of order must be maintained irrespective of the character and quality of the persons or bodies disturbing public peace.

This report was accepted and was appreciated by all those concerned who had to deal with riots. It also received a good press comment.

6

Some Problems of Administration

The High Court had proposed to the Government that the grade of the stenographers of the High Court should be raised from Grade II to Grade I which existed in the Secretariat. There was a lengthy correspondence on the proposal between the High Court and the Government, but following an objection by the Finance Department, the Government did not agree to the proposal. It appeared to me that the Finance Department did not appreciate the requirements of the High Court, and rejected the proposal notwithstanding the weighty reasons which prompted the proposal. Neither the nature of the work nor the speed and the high efficiency required of stenographers of the High Court seemed to have been kept in view when it considered this matter. While the stenographers of the Secretaries to Government, who mostly had to take short dictation in the form of notes and correspondence, were in Grade I, court stenographers, who were called upon to take down long dictation of a highly technical character, transcribe it with speed and efficiency and act as Personal Secretaries of the judges were placed in Grade II. This was one of the reasons why some of our stenographers sought for and secured first grade posts elsewhere. It was difficult to attract for the Grade II salary, stenographers with any claim to speed, accuracy and efficiency. No one who came up to the required standards was willing to take up a Grade II post.

A judge’s work was transacted mostly with the assistance of a stenographer and unless the stenographer had speed and was efficient the output of work was materially affected. But the Finance Department and the Government held the purse-strings.

The Finance Department did not seem to show any anxiety to consider cases on merit, but adhered to a classification placing the Secretariat at a higher level than any other branch of the Government and laying down an arbitrary rule that the staff of the other departments including the High Court should be at a lower grade and ought not to be entitled to any secretariat or other allowance. We could only record our protests against the rejection of our proposals and state once again in clear and unmistakable terms the basis for this proposal and the adverse effect such rejection would have on the speed and efficiency of judicial disposals.

One of the nagging headaches the High Court and the Government had in the early years after India became a Republic was in respect of the judicial officers who came over to the state service as a result of the Rendition agreement 1945 between the paramount power and Hyderabad State, and those that were taken over as a consequence of India becoming independent on 15 August 1947. Shri Kurien, a district magistrate in Secunderabad, a British Administered area, imagined he was superior to those occupying similar posts because he had been in the service of the Crown representative in the British administered area before the British Resident left Secunderabad and his services had been taken over by the Nizam's government. He therefore claimed seniority over all judicial officers of the state government. His representation of 18 February 1952 indicated this attitude. I knew him, as he had served under me in the Secunderabad Court when I was the Divisional and Sessions Judge. There was also another judicial officer Shri G. M. Panje who was in the administrative service. He did not give any such trouble. The persons who served in the Court at the time I was the Divisional and Sessions Judge were Shri Govind Rao Mainkar, District Magistrate *(Nazim-e-Aula),* Shri Pasmamla Narasimha Rao and Shri Deophode, District Munsifs. After I was elevated to the High Court, Kurien was appointed as Registrar of the High Court. He had earlier on 18 February 1952 filed an appeal with a copy to the Home Department on 7 May 1952 and a copy to State Counsellor, on the assumption that the Rendition agreement of 1945 between the Crown Representative and the Government of Hyderabad applied to his case. His services were not transferred under the agreement of 1945. He continued to serve the Crown Representative till the paramount power came to an end on 15 August 1947 and the Nizam's government then took over his services. He could not, therefore, claim that he was governed by the Rendition agreement of 1945. The rules of the state service applied to him as they applied to other officers in the Nizam's services. With the country gaining Independence on 15 August

1947, he was offered the post of District and Sessions Judge. Kurien pleaded that under the Rendition agreement he had a right to be posted as such in Secunderabad. As Registrar he tried to behave as if he had a superior status. Within a short time he was disabused of this notion. I took the view that there was no force in his argument that he held a status superior to other coequal officers in the state services and as such he did not suffer any injustice. Justice Mohammed Ahmed Ansari agreed with this view and the matter ended. But Kurien took up another matter relating to special allowances. He was, however, replaced as Registrar by Shri Sherfuddin Ahmed, H.C.S and Shri Shankar Pershad as Deputy Registrar, both of whom were serving in the Home Department. They were recalled and placed at the services of the High Court. Shri P. Narasimha Rao also was appointed as Assistant Registrar. The Chief Justice, agreeing with me, said that 'Shri Kurien's case has no special features'.

In another case I had to take a decision in an administrative matter which exposed me to criticism by the person who was ultimately affected. A subordinate judicial officer, an influential personality in the government, who also served as a subordinate judge, was seconded to the Home Department which used to deal with matters relating to judicial officers. There he played havoc with seniority and other matters pertaining to his colleagues and seniors so as to advance his own interest. As I had suffered in the past at the hands of such officers in the Home Department I was concerned in ensuring that others would not be subjected to similar treatment. This officer claimed seniority over his colleague Firasat Hussain, who before the Police Action was placed above him. When he appealed this, the High Court Administrative Bench rejected the appeal. After I took over he again made a representation. I went through his case, heard him as well as the officer against whom he had appealed. After this I held that the applicant was senior to Hussain. This was approved by the Chief Justice. When he came to thank me he said he had been buried six foot deep by the erstwhile administration, but I had resurrected him. He also confessed that although he he had worked against me when he was in the Home Department, I had not allowed it to influence my decision in his case. I told him that I would be accountable for whatever I did and similarly he would be accountable for whatever he did. Soon enough all his sense of remorse disappeared when another colleague of his, Govind Rao Halwalker sent a representation that he was senior to both the officers referred to above and had challenged their seniority while in the home department. He averred that though senior, he was now placed below both these officers. Once again I looked into the matter and, having heard both

the affected, held that Halwalker was, in fact, senior to the two. It will thus be seen how in administrative matters such clever maneouvring can take place. With the concurrence of the Chief Justice the seniority of Halwalker was restored. The other officer who by then had a judicial post started a propaganda against me. But this soon stopped as, when he called on me, I did not mince words in making him realise that it would not pay. The tendency of judicial officers to talk loosely about their superiors was in this way curbed.

In another case I had to perform the difficult and unpopular task of going into detail about the performance of each judicial officer to determine whether he deserved promotion and give my opinion without reserve, as indeed I was expected to. We had to face an unfortunate situation in which some officers had been promoted superseding others following the police action. Those promoted to the cadre of district and sessions judge included some who had not served even a year or two as district magistrates. This had naturally caused a great deal of envy in those superseded. We had to recruit members from the Bar and even here there had been considerable interference and favouritism. In my note prepared in August 1955 after the retirement of Chief Justice Misra I gave Misra's assessment of the performance and proficiency of each of the district magistrates on the basis of the quarterly analysis of their judgments. But the successor, Chief Justice Shripat Rao Palnitkar in a conference with the Home Minister D. G. Bindu, Education Minister Gopal Rao Ekbote, and the Chief Secretary, sought to review the supersession of some of the district magistrates in the matter of promotion as district and sessions judges and almost reversed the earlier decision by promoting the superseded and making them senior to those who had earlier superseded them.

In my note I clearly stated that this was not a matter to be treated lightly and that promotion to the post of district judges should not be made unless the officer had performed well and held out promise of further improvement.

While discussing the question of conduct of judicial officers, the case of a judicial officer in communication with the leader of the Congress party is worth recalling. The disciplinary action proposed against this officer (stoppage of increments) was sought to be interfered with by the State Public Services Commission. The Public Services Commission sought to disagree with the High Court's finding that the said officer was in communication with the Congress leader. In my note I pointed out that the PSC was wrong. I cited the letters of the judicial officer addressed to the state Congress leader Ramananda Teertha on

matters either pending before or disposed of by the court. I pointed out that the judicial officer (Munsif-Magistrate, Rajura) had sent a letter bearing the stamp and outward number of the court to Ramananda Teertha. I asserted that the High Court considered it wrong for any judicial officer to discuss cases decided by him with the head of any political party. The PSC, while agreeing with the High Court that the Munsif-Magistrate had subjected himself to an enquiry by a political party, maintained that this was a matter of indiscretion on the part of the officer but not really serious. My note clearly said that the letter showed that the officer's attitude was somewhat cringing and also revealed his anxiety to impress upon the Congress leader that he was a staunch Congressman. In this regard my note pointed out that in one letter the Munsif-Magistrate had brought it to Ramananda Teertha's notice that a certain Congressman-lawyer invariably appeared for landlords against the landless tenants, contrary to the party's instructions and that because of his unpopularity he was not elected as President of the Taluka Congress and recalled Jawaharlal Nehru's remarks that such persons were more a liability than an asset to the party. In another letter to Ramananda Teertha the officer had said that a better standard of morality was expected from persons holding responsible positions in the Congress 'of which you are the head and with which I am associated for 22 years'. He added in his letter that in his twelve years of service he had never hesitated to uphold the nationalist cause and that at the height of the *Razakar* movement he had organised and presided over a condolence meeting following the assassination of Mahatma Gandhi.

In the High Court's view, my note stated, the whole tenor of the letters showed a cringing attitude on the part of the Munsif-Magistrate. The High Court alone was competent to speak in the matter of the standard required from judicial officers to establish their impartiality and independence. When a judicial officer seeks to convey to the head of a political party that he had been or was a member, or at any rate a sympathiser, of that party, such conduct could not be unnoticed or unpunished, as it would otherwise compromise the judiciary's standards.

I said that having regard to the nature of the charge against the officer the punishment proposed by the High Court was not a severe one and as a matter of principle the Government ought not to interfere with the proposed punishment – stoppage of increments. I pointed out that High Court could stop the increments without reference to the Public Services Commission.

On the administration of the courts, I had occasion to express my views at the

time of the judicial officers' conference. My speech has been included in the select anthology of articles, essays and speeches edited by Professor G. C. V. Subba Rao, Principal of Osmania University Law College, *In Quest of Justice* pages 12–32 published by the Madras Law Journal Office.

I had then observed: 'To discharge his duties efficiently a Judicial Officer must possess not only legal knowledge but also administrative experience and ability. The orders passed and judgements pronounced etc. in accordance with provision of law is his judicial work.' This does not end here. The 'Machinery of Justice' has to be set in motion to give effect to his judicial orders, namely the execution of decrees, service of summons, maintenance of files, collection of fines and various other matters connected therewith. All this is his administrative work. He has to supervise and administrate the various sections of the administrative office including the duty to keep the court clean, neat and well maintained. He has to supervise the work of the *Shirestedar,* Record Keeper and *Nazir* whose functions and duty are prescribed.

A judicial officer can do much to check venality and corruption by keeping a strict eye over the doings of his subordinates and not leaving in their hands matters which require personal attention, the selection of guardians *ad litem* and commissioners, fixing dates of hearing transferring appeals, seeing that cause lists and information books etc. are regularly kept and particularly made available to the public, and that payments, copies of orders, information sheets, sale certificates, probates, letters of administration documents for return etc. are made ready and delivered within the prescribed time (if any) without unreasonable delay. I had stressed on the causes for the law's delay in granting adjournments generally for the mere asking, adjournment after close of evidence for preparing arguments, addressed piecemeal, the injustice caused in granting interlocutory orders or *ex parte* injunctions without full consideration, just as a matter of course.

A judicial officer has also a solemn duty just as in judicial matters, to administer justice in administrative matters. It is not expected that a person required to administrate justice in judicial matters, can be lax, or that it is not his duty to administer justice in administrative matters or deal with them according to his personal whims, prejudices, predilections or on extraneous considerations. If judicial officers properly administer their court the High Court has little or no opportunity to interfere.

About transfers and complaints, it is my view that every judicial officer is quite rightly agitated about transfers. These transfers upset his life and the education of his children and put him to a lot of other forms of inconvenience. Naturally he is restless and whenever he hears a rumour about a transfer, he rushes to Hyderabad for what has been known for centuries as *pairavi* i.e., currying favour with the authorities to give a decision to his advantage. In the past he was transferred on complaints, which he had considered to be unjust, because the complaints according to him had no basis and were only made because someone powerful in the district was at the back of them. Such transfers on complaints often involved the loss of travelling allowance. Whatever may have been the practice years ago, I assured the judicial officers that a salutary principle had now been laid down by the Chief Justice with respect to both transfers and complaints and I trusted that once they were informed about it they would have no further grounds for fear on this account. The principle was that the High Court would not ordinarily transfer a judicial officer unless he had been nearly three years in the same station or unless he were to be promoted or unless complaints against him on enquiry disclose a *prima facie* case for transfer on administrative grounds. He must, therefore get used to staying for the above period in a district unless he is fortunate enough to obtain a promotion, in which case he should have no objection to being transferred. Whenever there were complaints against a judicial officer, the High Court called for a report from the District and Sessions Judge, and only after satisfying itself that the complaint *prima facie* disclosed a ground for transfer, issued orders for transfer, sometimes with the loss of travelling allowance. We often received from the Sessions Judges reports saying that there were serious complaints against judicial officers of bias, want of integrity, dishonesty and partiality and that they should be transferred. We refused to transfer judicial officers merely on the ground of suspicion because if the complaints were really justified there was no reason why we should not act on the complaints because we would be foisting him on the place to which he was transferred. We therefore insisted upon a proper enquiry, and, if as a result of this, we found that a *prima facie* case had been made out, we did not hesitate to suspend such judicial officers in the interests of purity of judicial administration and cause a judicial enquiry to be held by one of the Hon’ble Judges. I assured them that the Hon’ble Chief Justice had put his foot down on the harassment of judicial officers on odd and sundry complaints and even caused contempt proceedings to be instituted against complaints. This action had its salutaŕy effect, since then we did not receive such groundless

complaints. I, therefore, requested the judicial officers not to be disturbed that they would be transferred on account of complaints but expect a transfer on the expiration of normal period of three years in the district.

While on the topic of complaints, I found that we received complaints only against 10% of the judicial officers, while the other 90% gave no cause for any complaint. Of these 10% some gave rise to complaints only by their indiscretions. As a general principle, judicial officers should not talk loosely, whether in Court or out of Court. It is, I fear, this loose talk which creates a lot of trouble for them. When I was a practising lawyer I had often known judicial officers say things against their superiors, the High Court generally and against individual judges, in utter defiance of propriety and discipline. Persons who hear such things are not all persons who mind their own business.They are likely to carry tales and in doing so exaggerate or misrepresent the original remarks. It is well to remember that every party in a litigation is a potential complainant, if he happens to lose his case. So, in the day-to-day discharge of their duties, as judicial officers, they should be cautious in saying or doing anything which may or is likely to be treated as partiality. I have often had occasion to hear about some judicial officers who have a penchant for adversely and even fiercely criticising the schemes of the High Court so as to give the impression that they were going to sabotage the implementation of policy by putting forward more often than not imaginary grievances and chimerical objections. It was strongly emphasised that even when the Hon’ble Chief Justice and the Administrative Bench made up their minds to implement any given scheme, they did so only after mature consideration and would see to it that it is carried out. It was, therefore, futile and even puerile to advance groundless criticism or to create difficulties. Any real hardship or difficulty would be surmounted, if it was made known to us. If, without taking this course, one carried on a kind of running commentary before all and sundry, he was bound to land himself in difficulties.

In the end I emphasised that as citizens judicial officers had their part to play in the general progress of the country and its social advancement. They were in the position of Nyayamurthis. By their conduct, bearing and example they should draw to themselves respect rather than compel it by relying upon the powers with which they are invested. If two parties had a dispute and wanted it to be amicably settled, they chose as umpires persons most respected in the community, in whom they had confidence. It is that respect for integrity and impartiality of the chosen umpires that induces the disputing parties to repose

implicit confidence in them. A judicial officer, since he is not chosen by the parties but by the High Court, should be in a better position to inspire confidence and respect. He must conduct himself in such a way as to win the confidence of the people of the district and make him appear to be an umpire chosen voluntarily by the litigants themselves.

7

Two Chief Justices

While I was engaged with the enquiry, about the beginning of November 1952, there was an announcement that Justice L. S. Misra of Allahabad High Court, presiding over the Lucknow Bench, had been appointed as Chief Justice of the Hyderabad High Court. There was a meeting of our judges and all the senior judges were firm in the view that we should not go to receive him. This was the function of the acting Chief Justice. They also expressed the view that when he called on the judges we should return the call. I said that would not be proper, because once he was sworn in as the Chief Justice of our High Court courtesy demanded that we should call on the Chief. I was however overruled on the plea that it was the duty of a person coming from outside to call on those who were already there. I could not convince them. A few of the seniors preferred not to express their views. Consistent with the decision of the majority, Shripat Rao received the Chief Justice and after the Chief Justice took his oath he came to the court w-here we all met him. As soon as the Chief Justice started functioning I sent a note to him that since he was now the Chief Justice it was for him to nominate the administrative judge and till then I would wait for his advice. The Chief Justice did not make an endorsement on the file I sent to him but kept it with him. After a few days he asked me to continue as the administrative judge. About this time though the seniors had said it was for the Chief Justice to call on each one of us first, I found each one of them had already called on him. Although I was the last, I thought since the Chief Justice was accompanied by his wife, my wife and I should call on them. We found Shri and Smt Misra to be a charming couple. Their second daughter Indu and their grandson (son’s son) little Ajay were with them. We got on well. My association with him in both the

administrative matters and judicial work was harmonious, though we had our differences in both these but ‘with utmost respect’, to use the language of judges.

The Chief Justice was a stranger to the city and the state, though not to its culture. He had yet to know his colleagues, the lawyers and the staff of the High Court. He had some distant nephews, the Misras in Hyderabad who had been in business and one or two of whom were in service, so that even Mrs. Misra soon settled down. They had a problem with their residence which they did not much like. The government had taken a house on rent in Banjara Hills but eventually they were given a government house in Begumpet. Once we came to know each other well, he told me that Prime Minister Jawaharlal Nehru who knew him and his family well had persuaded him to take up the assignment. Justice Shripat Rao was disappointed and though he seemed to have reconciled himself he was naturally not very happy.

Justice Misra’s *bonhomie* helped to create friendly feelings amongst his colleagues. Soon enough everyone got used to having a Chief Justice from outside. I was happy that he reposed confidence in me as the administrative judge so much so that after some time persons who could not exploit us for advancing their own interest started to spread a canard that I had put Misra in my pocket. My reply was he is too big a man (nearly six feet tall and broad-shouldered) for my small pocket. As I always believed that just as we are committed to administer justice without fear or favour, we must in administrative matters disperse justice in the same manner. Administrative matters cannot be influenced by caste, community, or political considerations. This would not accord with the spirit of justice. The life of a judge is very hard. Everyone concerned including the public will be watching not only his work on the bench but also how he behaves in private life. All these aspects determine his reputation as an impartial and just judge.

As the High Court, from the time it came into existence as an appellate or supervisory body had been working in Urdu, it was thought that an Urdu-knowing judge of a British Indian High Court who had been working in English, interpreting laws in English, familiar with the judicial approaches first of the Privy Council and then of the Federal Court of India, should be appointed to inculcate an all-India ethos. Whatever may have been the objective, Chief Justice Misra soon realised that the judges of the High Court and the subordinate judiciary were not in any way inferior; nor did they require upgradation in their working and administration of justice. Even the bureaucracy functioned with as

much efficiency and concern as in any Part A State. The Chief Justice in fact said so. He paid compliments to the subordinate judiciary and the Bar. He declared at a flag-hoisting ceremony on the Republic Day that the subordinate Judiciary had an abundant measure of both talent and the will to do justice or to get justice done. He said he was also happy to add that in the state of Hyderabad there had been a complete separation of the judiciary and the executive. This certainly was not prevalent in British India, though Hyderabad had adopted it for a quarter of a century with the result that the law courts had been left free from executive influence. Tt may be stated/ he said,'that the Nizam's State was the first state to achieve this objective while the rest of the states even after the Constitution have not been able to achieve this objective'. Speaking about the Bar he said: 'The Bar of Hyderabad at any rate is one of which all of them can be proud. It has always been willing to give ready cooperation to the Bench whenever necessary.'

During Misra's tenure Sherfuddin Ahmed (H.C.S), a senior judicial officer seconded to the Home Department, and Pasmamla Narasimha Rao who worked under me as a magistrate in Secunderabad, were appointed as Registrar and Deputy Registrar respectively. These two were sent to Lucknow and Allahabad for what was termed 'training'. In my view it was more to see how these courts worked. In fact all Hyderabad Civil Service (H.C.S) officers of the state assigned to the judiciary in their initial training period were sent to North Indian courts where Urdu was the local language. Sherfuddin and Narasimha Rao, on their return, said that neither of them found any difference between the working of our courts and the courts they visited. It may be recalled that Mirza Samiullah Baig a leading lawyer of Allahabad High Court who, after consultation with Sir Tej Bahadur Sapru, a distinguished lawyer who earned a name during World War II when negotiations for the freedom of India were going on during the visit of Sir Stafford Cripps, was appointed Chief Justice of Hyderabad in or about 1921. Mirza Samiullah Baig was the junior of Sir Tej Bahadur. During his Chief Justiceship the High Court was inaugurated in 1921 with a charter granted by H.E.H. the Nizam, which followed the statutes under which High Courts were constituted in British India. The structure and working of the judiciary was thus similar to that of the British Indian Courts. It was a great credit that Chief Justice Beg known by the title conferred by H.E.H. the Nizam as Nawab Mirza Yar Jung persuaded the Nizam's Government to separate the Judiciary from the Executive.

One day Chief Justice Misra referred to a contempt of court case. In a

proceeding before his bench a collector, a deputy collector and a Superintendent of Police were summoned for disobeying the orders of the court. The Chief Justice was under the impression that the executive officers and bureaucrats in the erstwhile Nizam State had no respect for the judiciary in the state. I told him that, that was not my experience. I had never had any occasion to come across such a case.The judiciary was under the able leadership of Mirza Yar Jung who as earlier mentioned had been a junior of Sir Tej Bahadur Sapru. He was the Chief Justice from 1920 or 1921.I was surprised to find that the Collector Verda Rajeshwar Rao, and Deputy Collector Pratap Reddy, who were well known to me should have disobeyed any orders of the Court. I told him that the Collector was known to me ever since we were in England. The Deputy Collector was my student when he was undergoing training in the Civil Service House.I used to lecture to the trainees for about six years. In view of this I said there may have been some communication gap. It later appeared that I was right. The officers, at the time they were directed by the collector to execute his orders, were not shown the order of the court nor were the orders executed on the officers, directing them not to interfere with the possession of the tenant. Initially it appears that the alleged contemnors had wanted the petition to be disposed on merits as they wanted the court to know that they had the highest regard for the judiciary and would not have acted in any manner contrary to its orders. After hearing the case and before the orders were passed, the lawyers of the respondents evidently advised them to give an unqualified apology while setting out that they were not aware of any orders of the court, nor were any orders served on them. The respondents gave such an unqualified apology that it was accepted and the proceedings dropped. This was a unique step.

It is because of this Justice Misra appreciated the signal achievement and in fact found very little difference in the working and outlook of our judiciary.

After Misra took over, I went to Calcutta on a private visit with my wife in December 1953.1 had a friend, Bonomali Das (Buno) Banister- at-law, a colleague at Cambridge, who was practising at Calcutta High Court, and with whom we stayed. I had also met him in 1939 when I visited Calcutta to brief Shri N. N. Sircar in the Jatprole Zamindari case. Our stay in Calcutta for a week or so with Buno was very enjoyable. I met my other friends and colleagues, particularly Justice P. B. Mukherjee and Subhimal Chander Roy who were also contemporaries. The former was with me at Leeds University and the latter in London. There were many others who were my contemporaries in England

whom I met. I also called on the Chief Justice Phanibhushan Chakravarti, a bachelor. On his advice and assistance I visited the administrative office. The Registrar, Shri Bhattacharya, a senior judicial officer who was later elevated to the Calcutta High Court saw me and explained the working of the High Court, the original side, the appellate side, etc. From here we visited Cuttack, Orissa and its High Court. Justice Lingaraj Panagrahi was the Chief Justice. He was good enough to assign Shri Misra, his Deputy Registrar to help us and placed a car at our disposal. I called on the Chief Justice who was a very affable and able person. I visited the High Court. As Orissa had been a part of Bihar and Bengal and was only separated in about 1935 or 1936, the High Court was housed in the District Court which was accommodated to its requirements. The Chief Justice after retirement became Speaker of the Legislative Assembly.

We called on the Governor, Justice Fazal Ali, retired judge of the Supreme Court. He was gracious and hospitable. When during the conversation I mentioned the news that the Central Government was contemplating the Constitution of a States Reorganisation Commission, and that a person of his eminence should be its Chairman, he said nothing except to remark that such matters were decided by the Prime Minister. From Cuttack we visited Konarak, Jagannath Temple, Bhubaneshwar, etc. When we visited the Jagannath Temple I had placed my expensive camera which I had purchased in 1932 or so in Germany, in the car loaned to me by the Public Prosecutor. As it had a leather case and could not be taken into the temple, I put it in the car and told the driver to take care of it. When I got into the car after our *darshan* I found the camera missing. I asked the driver. He said he did not know who had taken it away because after we left he had gone to have a cup of tea. There was a police investigation. The Collector who was attending on us also had it investigated but to no effect. I felt very upset at the loss of this camera which was with me for such a long time. On our way back to Hyderabad we stopped at Vishakhapatnam and visited the Simhachalam Temple where we were received with full temple honours. When we reached Vijayawada in the morning the newspapers were full of news about the constitution of the States Reorganisation Commission and the appointment of Justice Fazal Ali as its Chairman. I was happy that without any information I had just suggested to Justice Fazal Ali that a person like him should be appointed. Later when he visited Hyderabad he came across to speak to me at a dinner and to apologise. When I had made my suggestion, he said, he had already been invited and had consented to be the Chairman, but could not disclose it. I told him that at any rate my thinking and the Prime Minister’s was

the same. He laughed. He was so cultured that even after a year or so he had not forgotten the incident and was contrite that he had not reacted in the way he would have done if he had not been under restraint.

There are a few incidents during the tenure of Chief Justice Misra which I would like to recount. The first one relates to a request of our Prime Minister Jawaharlal Nehru to the Chief Justice. In 1954, soon after his return from his summer vacation, he called on me and told me confidentially that on his way from Lucknow he had halted in Delhi and called the Prime Minister. The Prime Minister told the Chief Justice that a young lady from an affluent family of Aurangabad was betrothed to a young man from Bombay. The bride and bridegroom had not met each other. The marriage was to take place at Aurangabad. On the wedding day after the bride had been brought into the *pandal,* just as she was about to hold the bridegroom's hand she noticed that it had a lot of sores with pus oozing out. She was shocked at this repulsive sight. She suddenly got up and left the *pandal.* This created a commotion and after the parents came to know they accepted her decision not to go through the marriage. The bridegroom filed a suit in Aurangabad District Court asking for a declaration that the marriage had taken place and consequently he should be given the relief for restitution of conjugal rights prayed for by him. This suit was pending for nearly three years and there seemed to be no hope of its being taken up for hearing. The Prime Minister told the Chief Justice that the young lady had met him and sought his help as she wanted to get married again. The Prime Minister asked the Chief Justice whether he could do anything to help expedite the disposal of her suit. The Chief Justice showed me a paper from an official pad on which Prime Minister Nehru in his beautiful hand had given the names of the parties, the number of the suit, the date of its filing and the court in which it was pending.

After I had seen the paper showed to me, I requested the Chief Justice not to take any action in this matter but leave it to me to deal with it. I called the Registrar immediately and asked him to write to all the district courts in the state that it had come to the notice of the High Court that quite a number of suits in which disputes concerning marriage, separation, nullity of marriage, divorce etc. where particularly young parties were concerned were pending for a long time. In view of this the High Court wanted to know how many such suits for restitution of conjugal rights and/or declaring nullity of marriage were pending, for how long and the reasons therefor. This information with the names of the parties, the date

of filing of the suit etc. was to be sent to the High Court within a fortnight. The court received this information from the various District Courts. After receipt of this information all the courts including the Aurangabad Court were directed to expedite disposal within the shortest time where particulars were given, the statement shown as pending, and for which no sufficient cause was given. The suit in question which was pending in Aurangabad and other similar suits were disposed of within the next six months.

The second incident relates to the conduct of the Chief Justice's stenographer who was also being treated as a personal assistant. Earlier this person was the stenographer of Justice Shripat Rao and acted as his PA when he was the 'acting Chief Justice. This person had by reason of being near to holders of power been spreading canards that it was he who helped to write the judgements of the courts as he was one of the persons who was recruited when English became the language of the High Court and subordinate courts and quite a few judges though they knew English were not used to writing judgements in English. Perhaps in the initial stages such recruits may have helped by revising the language. Be that as it may, many of the subordinate judges and district judges used to contact him to achieve their personal ends. There was yet another person who sought to exercise influence over others by advertising that he was a distant relative of mine.

When Chief Justice Misra wanted to have a good stenographer and secretary I suggested one or two as capable, reliable and dependable but some how Shripat Rao's stenographer managed to get himself attached to the Chief Justice. This man's performance was quite unsatisfactory, so much so that Smt Misra refused to talk to him.

After Shripat Rao was appointed Chief Justice, he was reported to be agreeing to the direct recruitment of judicial officers in close association with the Home Minister, Shri Bindu, the Chief Minister, Burgula Ramkrishna Rao, the Education Minister, Shri Gopal Rao Ekbote and the Home Secretary, Shri Chandrakant Rao Godse who had taken over from the judiciary. Four District and Sessions judges were thus appointed direct. They were Nandagiri Venkat Rao, Sriramulu, a practising lawyer in Secunderabad, Jithendemath Waghray son of Raja Bahadur Bishweshwarnath, retired Chief Justice, and Ramlal Kishen, nephew of Sri Kishen, Barrister-at-law. After these four were appointed Konda Venkat Ranga Reddy, Revenue Minister came to see me one day to consult me about the offer of Shripat Rao to appoint his son Konda Madhav Reddy who was

a practising advocate as a District and Sessions judge. I advised him that Madhav Reddy should refuse the offer. Ranga Reddy was taken aback and asked why. I said that Madhav Reddy was making good progress at the Bar. The judges had a very good opinion about him. But if his son was appointed during Ranga Reddy's tenure, it would be taken as being due to his influence. The offer, in my view, was being made on purpose to discredit him with the Prime Minister Nehru who had a very good opinion about him. If he accepted it, there was another impediment. Madhav Reddy may be posted at distant districts and the desire to get him posted in Hyderabad or a district closer to home would induce those interested in him to get him appointed accordingly. Having said this I asked him, 'Have you ascertained Madhav Reddy's opinion on the offer?' Shri Ranga Reddy said he was not in favour of accepting the offer. I said I didn't blame him. In fact I was quite pleased. Sooner or later he would be appointed a High Court judge direct from the Bar. On hearing this, Shri Ranga Reddy acquiesced. When I became the Chief Justice I was able to prove my forecast right and fortunately Ranga Reddy, who had by then retired from politics and was ill, could see his son appointed a judge.

In another case Shripat Rao wanted to appoint someone in the High Court and sent the file to me. I endorsed my reluctance on this note. The Chief Justice endorsed that under Article 229 of the Constitution the Chief Justice was empowered to make all appointments in the High Court and he was exercising that power. I wrote back that it was not my desire in any way to challenge that power about which I was aware. I was under the impression that he wanted my views, and hence offered them for what they were worth. After sometime, when he suggested the appointment of a Deputy Registrar, a person who had been holding out that he was a close relative of mine, he marked the file again to me asking me for my views. I immediately endorsed that in such and such a case he had been pleased to endorse that the power of appointment of officers in the High Court under the Constitution was that of the Chief Justice. In view of this position I would refrain from offering my views. He seemed to have told the person concerned: "When I wanted to appoint you as a Deputy Registrar your uncle was against it'. Such were the situations I had to face at the time.

An interesting case handled by me during Chief Justice Shripat Rao's tenure before the formation of Andhra Pradesh was the petition filed (in April 1956) by the elderly and respected barrister Sri Kishen against the proposed disintegration of Hyderabad State as from 1 November 1956. The States Reorganisation

Commission headed by Fazal Ali, retired judge of the Supreme Court had recommended the disintegration of Hyderabad State and the merger of its Marathi speaking districts (called Marathwada) with Bombay state and of the Kannada speaking districts with Mysore etc. to form Karnataka State. As regards the remaining nine Telugu speaking districts called Telangana, the Commission recommended that the region be made a separate state with the option at the end of five years to decide, through a referendum, whether to continue as a separate state or merge with Andhra State to form Andhra Pradesh. Barrister Sri Kishen filed the petition even as there was an agitation against integration of Telangana with Andhra and even before the relevant law was enacted. The long list of respondents included the Vice President and the Chairman of Rajya Sabha, the Prime Minister, the Speakers of Lok Sabha and Hyderabad Assembly, the Central Home and Education Ministers, and the Congress Committees of Hyderabad, Andhra, Mysore and Bombay. The petitioner stated that his entreaties to the Prime Minister against implementation of the recommendations of the States Reorganisation Commission were not being heeded. If the *malafide* attempt to break up the state succeeded, eing heeded. If the malafide attemp it would not only injure the people-of Hyderabad in general, politically, socially and economically, but would affect the petitioner most adversely and it gives him a mental shock to see the land of his birth torn asunder/ Setting out a great deal of historical fact, the petitioner contended that it could not be said that legally and constitutionally Hyderabad State had ceased to exist or merged with or acceded to the Indian Union as the Constituent Assembly ‘solemnly assured’ by Nehru and Patel had not been convened. The petitioner was so worked up emotionally that while making submissions before the bench comprising Ansari J. and myself he fainted and fell down and had to be hospitalised. The case had to be adjourned to a date after the vacation. But Sri Kishen sent a petition from the hospital seeking to have the case heard during the vacation. He sent another petition on June 21 after the introduction in Parliament of the States Reorganisation Bill.

The case was heard afresh by a division bench consisting of Vithal Rao Deshpande J. and myself as Ansari J. was on leave. We held that the petition suffered from all the infirmities that a petition of this nature could suffer. Delivering the judgment of the bench I held that there was an inherent right in the legislatures to conduct their affairs without any interference from any outside body. Therefore no writ of prohibition, *certiorari* or *mandamus* could be entertained to restrain the legislatures from enacting legislation even if it was

ultra vires their powers. Until a bill became law, the legislature‘s powers not being complete, the courts could not reach them. Neither a court nor a judge had a general or roving superintendence over an undefined field nor was it their function to declare void or directly annul a law immediately it was promulgated unless its interpretative function was sought by any person or party challenging the law as having infringed his/her rights on the ground of its being *ultra vires* the powers of the legislative body.

Further, we held that a person or an authority apart, when a writ was sought to be directed, it must be against a respondent residing within the territorial jurisdiction of the High Court. The matter, however, did not end there, because after the formation of Andhra Pradesh the very first case which Subba Rao, Chief Justice, and I heard was a petition by the same petitioner. I will deal with this later.

PART III

8

Andhra Pradesh High Court

The States' Reorganisation Commission's report while recommending the disintegration of Hyderabad State, had suggested that the nine districts of Telangana which were constituted as a separate state —Telangana—would decide after five years through a referendum whether to continue as such or integrate with the Andhra State. This part of the recommendation was opposed vehemently by the majority of leaders of the Andhra State who after its formation in 1953 decided by one vote of the Legislative Assembly to have their capital at Kurnool which did not give the state the importance it desired. Having failed to get Madras as the capital of Andhra, these leaders were looking forward to having their capital at Hyderabad after the Telangana region was integrated with Andhra. While the leaders of Marathwada and Karnataka were willing to have their areas integrated with Maharashtra and Karnataka states respectively, the people of Telangana were against their area being integrated with the Andhra State. The maltreatment of the Telangana people, after the Police Action, by the Andhra officers of the erstwhile Madras State who were sent to Hyderabad, resulted, as stated earlier, in the *Mulki* riots which spread to the whole of the Telangana area.

This was the state of affairs even after the elections in 1952 when a popular government was established under Burgula Ramakrishna Rao. It was within six months after he became the Chief Minister that the *mulki* riots had taken place. I have already referred to my enquiry as a Chairman of the Commission of enquiry into the *mulki* riots. When the States' Reorganisation Commission, under the chairmanship of Justice Fazal Ali, retired judge of the Supreme Court,

recommended the disintegration of Hyderabad, Pandit Nehru, the Prime Minister expressed surprise at this recommendation, but nonetheless was prevailed upon to reject it by the maneouvres of top political leaders both from Andhra and from the Centre who were in favour of the integration of Telangana with Andhra. The proposal for a separate Telangana state was not accepted in spite of the views of the people in its favour. It was, therefore, decided to have Andhra Pradesh with Telangana areas added to the Andhra State, with its capital at Hyderabad. After this was decided there was a movement both from a section of Andhra and from the Telangana to continue, at any rate, the High Court at Guntur with a Bench at Hyderabad. The joint agitation had a chance of success because on the Hyderabad side Urdu had for ages been the language of the court, and lawyers, both Muslims and Hindus, were brought up to argue in that language. At this stage Shri K. Subba Rao, Chief Justice of Andhra Pradesh, took a hand in trying to persuade the Telengana people to have the High Court at Hyderabad. He was not quite happy at the prospect of not having the High Court at the seat of the Government. That apart he did not like the atmosphere of Guntur where he had already spent nearly three years. He wrote to me to say that he was visiting Hyderabad to meet me, the lawyers and others. I wrote to him that I would have returned from Aurangabad after opening a law college affiliated to the Osmania University and would be happy to meet him. On my return I met Justice Subba Rao who remarked, ‘Why so many law colleges?’ I told him, ‘For years when we were under the British rule it was the lawyers who were in the forefront of the struggle for freedom. Now that we have acquired it and we have a democratic government, it is all the more necessary to make legal education available to as many young men as would wish to become law graduates. Law will discipline them, make them know their rights, their limitations and the mutual obligations of the state and the citizens.’ Subba Rao had no comment on this.

After that we had a discussion about the shifting of the High Court to Hyderabad. I told him I would have a talk with the lawyers also before a meeting was convened for the Chief Justice to talk to them. I placed before him the important impediment that many of the Hyderabad lawyers would face, namely, that they could no longer argue their cases in Urdu which they were doing even after the coming into force of the constitution because all the judges of the Hyderabad High Court who know Urdu were permitting them to do so. In fact some of the Judges though conversant with English did not have enough practice to write judgements in English. The Urdu knowing lawyers saw a disadvantage

if the High Court was transferred to Hyderabad where two thirds would be lawyers from the Andhra area.

I suggested that since initially a Telangana state was recommended for five years in the States' Reorganisation Commission, it would be better if an assurance was given that, since some of us (judges) would be part of the Andhra Pradesh High Court, a Urdu bench would be constituted. Subba Rao readily accepted this suggestion and in his talk with the lawyers, apart from pointing out the great advantages of having a High Court here at the seat of Government, gave them assurance of facilitating the Urdu speaking lawyers to argue their cases before an Urdu Bench for a five year period. Thereafter there was no difficulty from the lawyers side. Ultimately the shifting of the High Court from Guntur to Hyderabad was agreed to.

Before returning to Guntur, Subba Rao invited me and my wife to visit Guntur. Accordingly we visited Guntur in August 1956 as Subba Rao' s guests. We went by train and reaching Vijayawada around midnight had to wait until early morning for the connecting train to Guntur. Having spent a sleepless night we reached Guntur very tired. Subba Rao was staying in the bungalow which was earlier the residence of the district and sessions judge. Before Independence the District Collector and the District and Sessions judge used to be Britishers and were provided commodious and comfortable residences with vast open areas. The idea was to signify their superiority.

After lunch I visited the High Court which had been located in the building which earlier housed the District Collector's office. The building, of course, had been remodelled to meet the needs of the new High Court. The court halls were small. There were seven judges including the Chief Justice and an *ad hoc* judge (Vishwanath Sastry, retired judge of Madras High Court). Besides Subba Rao I knew Justices Chandra Reddy and Umamaheswaran. The latter was the son-in-law of Shri Alladi's brother. The other three judges we met for the first time. They were: Bhimasankaram, Sathyanarayana Raju and N. D. Krishna Rao. Rao was from the I.C.S cadre.

That night we had dinner where Guntur *avakai* (mango pickle) was served. Subba Rao advised us that since the pickle was very hot it should be taken with some ghee. But I was cocky enough to take it without ghee saying I was used to it. For this act of mine I suffered. The whole of that night I was sleepless with pain in my stomach and chest. Next morning Subba Rao, when he came to know

of it, said I should have woken him up and that a glass of soda would have put me at ease. Anyway he sent for the judges' doctor, Kodandaramayya who after examining me told me not to go up and down the stairs or rub myself vigorously while having a bath. He called me to the hospital where he took my E.C.G. and an X-ray of my chest. While saying that I was perfectly all right he gave me medicines which, as per the prescription, were cardiovascular dilators and vitamin E, none of which I had taken earlier. In the evening I told Subba Rao I would leave for Hyderabad the next day. We cancelled our planned visit to Nellore to see R. L. Reddy, my uncle's son-in-law who had come to Guntur to take us to Nellore.

On returning to Hyderabad our family physician Dr Ranga Reddy examined me and told me there was nothing wrong with me. But I was feeling weak and felt tremors in my head as the Guntur doctor's prescription had convinced me that I had a heart ailment. In that state of mind I even accepted the offer of a bookseller of Allahabad to part with my valuable library for a consideration of Rs. 12,000/- Dr Ranga Reddy was of the view that my ailment was psychological. For some time I attended the court only in the mornings and took rest in the afternoons. Several other doctors examined me and assured me there was nothing wrong with me but I was in no mood to accept it. I was put at ease a year or so later by Dr S. Ramachander Rao who putting things in the correct perspective, explained to me that my suffering in Guntur was caused by acidity resulting from the hot and pungent pickle.

Sometime after I returned from Guntur Chief Justice Shripat Rao received a communication from Shri S. R. Das, Chief Justice of India, to say he would be visiting Hyderabad to assess the competence of the judges of the High Court of Hyderabad to be made judges of a Part "A" State and, secondly, which of them should be assigned to the High Courts of Andhra Pradesh, Karnataka and Bombay. Das asked Shripat Rao to form single benches for this purpose so that he could sit for some time with each judge. But Shripat Rao sat in a division bench with another judge, constituting single benches for the rest of us. Chief Justice Das did not sit with Shripat Rao but sat with all others. Even as Das was sitting with us, the Additional Registrar of the Supreme Court who accompanied him went round inviting senior advocates to meet Chief Justice Das.

The whole exercise was anathema to us for the simple reason that under the Constitution, the High Courts of Part "A" and Part "B" states were considered to be of the same standard, enjoying the same status and jurisdiction. Therefore, for

the Chief Justice of India to be asked to sit with each judge for a quarter of an hour to assess his suitability to sit on the bench of a Part "A" state High Court was to subject the judges to humiliation. To say the least, the whole exercise was most unjudicial and unsavoury and, therefore, the Chief Justice should have refused to undertake the exercise.

Be that as it may, some of the judges became nervous. One judge had the lawyers slated to appear before him rehearse their arguments. A senior judge arranged to take up a well-prepared case wherein a lady advocate was appearing for a party. When the Chief Justice sat with me, an advocate appearing started arguments in Urdu. As he could not follow the arguments in Urdu, the Chief Justice went away after five or ten minutes. Apart from this, the Chief Justice also met some senior advocates to ascertain the competence of each of the judges. What was more galling was that the litigant public rushed from court to court to witness the *tamasha* as the Chief Justice went from court to court to sit with each of the judges.

During the Chief Justice's visit to the court, in the evening, on my invitation as the Dean of the Faculty of Law, he visited the evening law college. When I was taking him to the college, the Chief Justice said, 'Reddy, I believe Andhra Pradesh State will be a Reddystan'. I was quite taken aback but my presence of mind prompted me to reply 'Sir just in the same way as the state of West Bengal is a Dasistan or a Bosestan'. He was surprised at this reply which he was not expecting. He merely said, 'I suppose so'. The function at the law college went off well. The Chief Justice's visit to the law college was greatly appreciated. When he was leaving Hyderabad the Chief Justice and all of us judges went to the Railway Station to see him off. Just before he got into the train he took Justice Manohar Pershad aside and had a conversation with him. We did not then know what it was about but learnt later that he wanted him to become a judge of the Bombay High Court where he would have a chance of becoming Chief Justice but Manohar Pershad declined the proposal.

The Chief Justice then went to Mysore High Court to conduct a similar exercise. On the 29 or 30 October there was a notification announcing that from 1 November 1956 the date on which the States Reorganisation Act would be implemented, Chief Justice Shripat Rao was to become a judge of the Bombay High Court, while Justices Quamar Hassan, Manohar Pershad, Ansari, Srinivasachari and myself were to become judges of the Andhra Pradesh High Court. Justice Siadat Ali Khan, Taqui Bilgrami and Kumarayya were dropped. I

believe originally Justice Quamar Hassan was proposed for the Karnataka High Court but later, perhaps because of doubt about his age and it was decided to assign him to the Andhra Pradesh High Court. On 30 October after I had seen off at the Secunderabad Railway Station early morning, my friend Shri P.V.R. Rao, the Chief Secretary who was transferred to Karnataka state as Chief Secretary, I went to Kumarayya's house at Marredpally. He was naturally quite upset and dejected. On the 31st evening the Government of Hyderabad gave a dinner to all the officers and judges, who were either being transferred or were taking over to serve in Andhra Pradesh. I attended it. Subba Rao, the Chief Justice and Shri Sanjeeva Reddy who was to become the Chief Minister, had a talk. After the talk Subba Rao took me aside and sought my opinion about Kumarayya's suitability for appointment as judge of the A.P. High Court. I believe the Chief Justice of India had made some remarks about him and in the end said that if the Chief Justice of Andhra Pradesh considered him suitable he could propose his appointment. I told Chief Justice Subba Rao that Kumarayya was selected to H.C.S. (Hyderabad Civil Service) and was appointed a *Munsif*. He served as *Munsif*, District Judge (*Nizam-e-Zila*) and after the police action as Divisional and Sessions judge. He could be proposed. Subba Rao said I don't know him or about him but on the strength of your recommendation I will propose his name and accordingly his name was proposed as an additional Judge of Andhra Pradesh. I also met Dr Siadat Ali Khan. He told me on being dropped that he wanted to see the Home Minister Pandit Govind Vallabh Pant, who after hearing him said in Hindi: 'I would have taken you but it is that Das (Chief Justice) who did not want you. What can I do? ' The language Pant was said to have used was not very complimentary to the Chief Justice. Anyway all three were provided for. Dr Siadat Ali Khan was made the Chairman of the Labour Tribunal, Andhra Pradesh, Kumarayya was appointed as Additional Judge of the A. P. High Court and Taqui Bilgrami was appointed as Chairman of the Labour Tribunal, Bombay, all for the periods they would have served as High Court judges if they had been taken as judges of Andhra Pradesh or Karnataka or Bombay.

Nearly a year after Kumarayya was appointed as Additional Judge, Subba Rao proposed to appoint P. Basi Reddy a leading criminal lawyer who was practising at Madras on a permanent post. When Basi Reddy was considered for appointment as a Public Prosecutor just before the Andhra Pradesh High Court was formed, owing to some political considerations someone else was appointed. When Subba Rao proposed to appoint Basi Reddy as a permanent judge it was represented to Subba Rao by a senior judge of the erstwhile Hyderabad High

Court that Justice Kumarayya who was already an Additional Judge should be appointed as a permanent judge and Basi Reddy as Additional Judge. Subba Rao refused to accept the proposition. In fact he told me that Basi Reddy was a much senior person not only in age but also as an eminent criminal lawyer whose services the court required. No one of his status would have accepted anything less than a permanent appointment and that too as a Junior to a person who was not taken from the Hyderabad High Court. I only hoped Subba Rao did not think I had misguided him. In any case Basi Reddy was appointed on 10 October 1957 and Kumarayya was appointed as a Permanent Judge twelve days thereafter on 22 October 1957. There was also another additional judge Shri Ranganathan Chetty who was a District and Sessions Judge and was appointed on 10 October 1957.

Chief Justice Subba Rao was very solicitous and went out of his way to look after the Telangana interests. The first Registrar who came along with the Andhra High Court did create some problems in the beginning, because of his temperamental difficulty in adjustment to the requirements of a different approach. Authoritarian in his behaviour he put on an air of superiority. For instance when, before Andhra Pradesh came into existence, he visited the Hyderabad High Court to discuss arrangements for shifting of the Andhra High Court from Guntur, he was received by the Registrar of the Hyderabad High Court with utmost courtesy and respect. In contrast, after the formation of Andhra Pradesh High Court, when the same Andhra High Court Registrar continued as Additional Registrar of A. P. High Court, Shri Narasimha Rao (who was Registrar in Hyderabad High Court) had to wait for hours together to meet the A.P. High Court Registrar and hang on for days together to get a posting.

The A. P. High Court Registrar, going round the various sections of the office one day, it appears, asked a clerk/typist who was wearing a necktie if he was a gazetted officer! Hyderabad staff were quite obedient but not inclined to be servile or cringing. The Registrar seems to have ill-treated a Telangana advocate who filed a criminal complaint against him. I interceded and after I talked to both and the Registrar apologised, the complaint was withdrawn. As the Registrar was on extension, on his term coming to an end, there was a change. Thereafter successive Registrars of the High Court starting from Shri S. Obul Reddy (later judge and Chief Justice) as well as the Chief Justice and Judges who were erstwhile judges of Andhra High Court, all showed great understanding of the need to cater to the sensitivities of the Telangana region and

the personnel which came along with it. In fact, I can, with my personal contacts with Chief Justice Subba Rao and the learned judges who came with him, say that they were very happy after shifting to Hyderabad. They were happier than they were while at Guntur. I can also vouch for the fact that the Telangana lawyers and litigants were greatly heartened by the objectivity and fairness with which the High Court functioned.

After the High Court of Andhra Pradesh was established there was a good deal pf talk about the various judges coming from that region and the inhibitions evident from such talk. The Telangana judges did not know the advocates of Andhra area; nor did the judges of Andhra region have any acquaintance with the members of the Telangana Bar. The result was that judges from each of the regions were trying to get to know the lawyers from the other region and likewise lawyers were trying to get to know the judges of the respective regions.

The type of litigation that was prevalent in Andhra was totally different. It was complex and intricate and was pursued by a tenacious litigant public assisted by a hard-core array of law touts, a few of whom, it was said, even had libraries and in some cases, gave the case papers to the lawyer only when he had to appear in the Court. As compared to this kind of litigation, the type of litigation in Telangana to which the judges of Telangana were accustomed in the erstwhile Hyderabad High Court was straightforward and elemental. There was very little complexity; nor did many cases involve forgeries and concoctions. Even the criminal cases were not atrocious or feud-oriented as were those coming from Andhra area, particularly from the four Rayalaseema Districts.

What Andhra lawyers in the districts imagined about the capacity and standard of the judges from the erstwhile Hyderabad High Court can be gathered from the speech of welcome given by the President of the Bar Association of Visakhapatnam when I went to inspect the courts there in January 1959. The President said that when the judges from Telangana became part of the Andhra Pradesh High Court, they (the advocates) thought that since they came from a High Court where the language of the Court was Urdu and an Urdu Bench was promised for five years, these judges might not be able to write judgments properly in English; and might not be able to cope with the intricate and complex litigation of the Andhra area. He said very soon after the High Court started functioning at Hyderabad, all of them were disabused of their earlier notions when they started getting reports of the manner in which the judges were conducting themselves and about their judgements. Making a reference to

Section 3(2) (d) of the Madras Estates Land Act, the President of the Bar Association said that at the best of times even the Andhra judges found it difficult to deal satisfactorily with matters relating thereto. He then referred to me and said that he was surprised to find a judgment delivered by me on Section 3(2)(d) reviewing the entire case law and laying down clearly the principles applicable under that section. He was referring to *Veerayya vs. Punnamma* (1959 Andhra Law Times, 39) decided on 24 December 1957 by a Bench consisting of Ansari, J., and myself. Shri Alladi Kuppuswami (later Judge and Chief Justice)appeared for the appellants. M. S. Ramachandra Rao and G. Venkatarama Sastry, both of whom later became judges of the Court, argued for the respondents.

This, he said, surprised not only himself but also the members of the Bar generally in the districts and from then onwards, they were all satisfied that the Telangana judges were equally capable, industrious and were able to tackle the intricacies of the Andhra litigation. In my reply, I said it was the erudition and industry of the counsel appearing for the parties that were responsible mostly for a just and satisfactory judgement and it was to them the credit should also go.

The Andhra Pradesh High Court commenced working from 5 November 1956. At 10.30 a.m. on that day all the advocates had gathered in the Chief Justice's Court where the Chief Justice and Justice Rai Manohar Pershad were scheduled to sit. As the bell rang, the two judges came to the Court and sat. Among the Telangana advocates sitting in the first row at that time was Barrister Sri Kishen, a relative of Justice Manohar Pershad. Even before the two Judges were settled for the business of the day, Shri Kishen stood up and said: 'My Lords, I have filed a writ petition raising important points relating to the constitution and the functioning of the Andhra Pradesh High Court including the jurisdiction of this Court where you (the Chief Justice) are presiding. According to those who were present in Court, it appeared that Chief Justice Subba Rao was unperturbed, cool, polite and firm. He spoke to Barrister Sri Kishen thus:

'If you have filed a writ petition and if it raises an important question, by all means the writ petition will be heard. The procedure in the Ajndhra High Court is that cases which are not in the cause list are never taken up for hearing.'

Barrister Sri Kishen: 'I don't know the procedure of Andhra High Court. I do not know what cases will be heard and what cases will not be heard. But what I have contended in my writ petition is of far-reaching importance. It goes to the root of

the jurisdiction and functioning of this Court including the Court of Chief Justice. Therefore, I want that my writ petition should be heard today.'

Chief Justice Subba Rao: 'If your writ petition is in the cause list, I told you, it will be heard and without it being in the cause list, as I said earlier, it will not be heard.'

Barrister Sri Kishen went on reiterating his earlier submission and was also murmuring something at that time.

Chief Justice Subba Rao: 'Registrar, ask the Bench Clerk to call the cases.'

Barrister Sri Kishen: 'This Court should hear me and unless you hear me, what all this Court is going to do will not be legal.'

Chief Justice Subba Rao: 'Bench Clerk, call the cases. Registrar, if this man obstructs the proceedings of this Court, see him out.'

When Chief Justice Subba Rao said this, Justice Manohar Pershad whispered something to Subba Rao, who then, in the hearing of advocates who were very near to the Bench, said to his colleague: 'If he (the petitioner) had filed a writ petition and raised important questions, this Court will certainly hear his writ petition. But that does not mean that he can obstruct the court proceedings in the manner in which he is attempting. The way in which Chief Justice Subba Rao handled the situation which confronted him at the very inception of the Andhra Pradesh High Court, (according to an Advocate hailing from Telangana) impressed those present. They felt that the manner of representation and persistent insistence of Sri Kishen was unfortunate.

The first colleague with whom I sat on the formation of Andhra Pradesh High Court was the late Mr Justice K. Umamaheswaran. We prepared our judgments alternatively during the period of the first couple of weeks and we had no occasion to disagree. I had known him earlier in Madras when I was the Junior of Shri Alladi Krishnaswami, the father of Shri Alladi Kuppuswami.

Next, I sat with Chief Justice K. Subba Rao, and one case which aroused great interest at the very inception of the Andhra Pradesh High Court was that of *Sri Kishen vs. State of Andhra Pradesh.* (ILR1957 Andhra Pradesh, 345). I have already referred to what happened on 5 November 1956, High Court reopening day. In this petition, Sri Kishen, challenged the States' Reorganisation Act and the disintegration of the Hyderabad State, and prayed for issuing an appropriate direction to the Government of Andhra Pradesh restraining it from functioning

under the provisions of the States' Reorganisation Act. A preliminary objection was raised by the then Government Pleader, the late Shri Seshachalapathi, appearing for the State, that the application was not maintainable on the ground that the petitioner did not disclose how his personal interest was violated or how it was affected by the passing of the States' Reorganisation Act and also for the reason that the petitioner did not state the precise relief he wanted and the form in which it should be given to him. When this point was argued with some passion, the petitioner became emotional and suddenly broke down and began to cry loudly, feeling, rather unjustifiably, that his status, respect and regard in the erstwhile Hyderabad State was not being given due regard. Suddenly pointing to me on the Bench, Sri Kishen told Chief Justice Subba Rao, 'Justice Jaganmohan Reddy will vouch for the kind of person I am'. This was a very unpleasant situation but was handled with great tact and courtesy. After the case was heard fully judgment was reserved. Subba Rao CJ. wrote the judgement and circulated it to me. I went through it and made a few suggestions while agreeing with it. The judgment of the Bench was pronounced by the Chief Justice. In that judgment, we pointed out that the petitioner, who was an advocate of long standing at the Bar though at present not in active practice, advanced an able and clear argument on the interpretation of the provisions of the Constitution though at times his passion for the cause of Hyderabad clouded his legal perspective and led him into exhortations pertaining to the field of politics rather than that of law. We also held that the disintegration of the State of Hyderabad was constitutionally valid, that the Union of India was not in existence as a result of any contract between the component parts; nor was it open to any State or group of States to secede from the Union, that a remapping of the Union could only be achieved in the manner prescribed by the Constitution which empowered Parliament (Article 4) to make laws providing for the amendment of the First and Fourth Schedule referred to in Articles 2 and 3 and for making supplemental, incidental and consequential provisions; and it was pursuant to these Articles that the relevant provisions of the States' Reorganisation Act were enacted. In the result, the petition was dismissed.

During my association with Subba Rao CJ. I soon learnt that he was against granting adjournments. He was known for rejecting prayers for grant of adjournments even as a judge of the Madras High Court. He had made almost an inflexible rule that unless an advocate was taken ill and arrangements could not be made for the case to go on, he would not grant an adjournment. Once or twice, I interceded with him and he explained that once you begin to grant this

indulgence, it is difficult to distinguish between a good cause for granting it and an unjustified one. But I think, whatever his object initially may have been, since the Andhra High Court was seated at Guntur, he wanted to encourage the lawyers practising before it, which was possible if the advocates coming from Madras, who had already monopolised Andhra cases, could be stopped from making a request for adjournments and throwing the work of the Court into confusion. I remember, during the period I sat with him, the then Advocate General, the late Narasa Raju, wanted an adjournment to perform the wedding of his daughter. His request was turned down by Subba Rao CJ., who said 'No'. Narasa Raju: 'Not even on the ground of my daughter's wedding' Subba Rao CJ.: 'Not even on the ground of your daughter's wedding.' Thereafter, Shri Narasa Raju sat down and possibly arranged for his case to be argued by someone else. This, I feel, in a way contributed to the Bar throwing up younger men as senior advocates which, in turn, was reflected in the appointments of younger judges to the Bench of the Andhra Pradesh High Court.

One other case which had some significance at the initial period and to which I wish to refer is that of *Gudla Satyanarayana State of Madras* (now Andhra Pradesh) (ILR 1957 Andhra Pradesh 643). This was a decision rendered by the Full Bench consisting of Subba Rao CJ., Mohammed Ahmed Ansari J. (as he then was) and myself. The question was whether by reason of Rule 134A (XI) of the Madras Motor Vehicles Rules, the Secretary who was empowered to cancel or suspend a permit could validly cancel or suspend the permit issued by the Transport Authority. This petition came up for hearing before Umamaheswaran J., who, while referring the matter to a Division Bench, did so to enable it to refer the matter to a Full Bench. Thereafter, the case came up for hearing before Subba Rao CJ. and Bhimasankaram J. Subba Rao CJ. had earlier, when sitting in a Bench in the *Amaravathi Motor Transport Company vs State of Andhra Pradesh* case, held that section 60 being a special provision governing the suspension of a permit by an authority which issued it overrode the general rule empowering the authority to cancel an order made by a superior officer and consequently the order of the Secre-tary suspending a permit granted by the Regional Transport Authority was illegal. The Bench referred the case to a Full Bench and the case was heard by us as stated above. After hearing, Subba Rao CJ. and Ansari J. agreed with the Amaravathi Motor Transport Company case. I however, disagreed and dissented from that view. Subba Rao CJ. by a separate order, concurred with Ansari J., and said that as both views were possible and since he had taken one of the views enunciated in the Amaravathi Motor

Transport Company case he agreed with Ansari, J. As Subba Rao CJ. was pronouncing that order, I could see the late Mr Seshachalapathi, who was then the Government Pleader, suddenly beaming happiness and turning to his Junior, and saying something to him. Subba Rao's order had indicated that there was a dissent and this appears to have come as a surprise. The canard current at that time was that Subba Rao CJ. did not like dissents by any of his colleagues on the Bench and would not thereafter sit with such colleagues as dissented with him. I may here mention that when the case was reserved for judgement and Ansari J. had sent me his draft, I mentioned to the Chief Justice that I have some reservations about the Amaravathi MotorTransport Company case and sought for a conference to discuss this matter. But Subba Rao immediately told me 'Please write your own opinion and send it', which I promptly did. I thought that Subba Rao would call for a conference to discuss our views but he seems to have directed its being posted for pronouncing the judgment. The canard that was current was thus nailed because thereafter I sat with Subba Rao CJ. in the Division Bench and Full Benches for nearly five months or more. I was somewhat unhappy to notice that there was not an *esprit de corps* among judges from Andhra as there was among judges from Telangana. I noticed this unwelcome trait among the lawyers and judges from Andhra. In so far as judges were concerned the *inter se* relations of a few of them were not very happy. They brought with them the caste and sub-caste feeling, also prevalent among the members of their Bar, into the Telangana area where it was not known. We had to get used to this trend. Madras State had a Brahmin/ non-Brahmin conflict while Old Hyderabad had Hindu-Muslim feelings after the advent of the *Razakars*. But after the formation of Andhra society was split into caste, sub-caste, backward and scheduled caste etc. The politics of power gave encouragement to these conflicts. More about these later.

I was told by some of my colleagues from the Andhra High Court that there were three lawyers who would address marathon arguments and were tenacious. They mentioned the names of three persons, two of whom are no more. I, however, was not troubled by these three learned advocates. I had great regard for their erudition, industry and persuasiveness. After giving them a patient hearing, if I found they were repeating themselves, I would then recount to them their argument and ask them, 'Is it not what you have submitted?' When they said it was, I would tell them to go to the next point unless they had something to add. In this way they were satisfied and I was greatly assisted by them. The difficulty comes when we begin to talk more than them or they get the

impression that we have not understood their argument and because of it, they are anxious to see that their point of view is understood.

Judicial punctuality and regularity are well known. The Hon'ble Chief Justice and judges of the Court are on the Bench by the stroke of the bell and do not leave the court before the afternoon session bell is rung. This, at any rate, was what I have been used to even from the Hyderabad days till I went to the Supreme Court in August 1969; and even there, though there was no bell, the stroke of the clock was as good. The people of Hyderabad were known for their nonpunctuality, that is for keeping to the *Moghlai* time. The term as such was derived from the Moghuls. Even here, as far as old Hyderabad High Court was concerned, punctuality and regularity was its characteristic. Justice Alam Ali Khan, one day found that owing to a flat tyre which he had while coming to Court, he would not be in time. He sent in a casual leave letter rather than be late to Court. In those days casual leave of fifteen days in a year could be availed of by judges as a right like other Government servants. This often resulted in quite a few Judges absenting themselves in the month of Aban the last month of the Fasli year, (September, October) to exhaust the balance of their casual leave. Under our service conditions now for judges of High Courts and Supreme Court there is no right as such for casual leave. The Chief Justices' Conference decided that a judge could be absent from duty in any emergency and since it is the Chief Justice who posts cases, he may not assign any work for him but this privilege could not exceed beyond twelve days in a year. As pointed out earlier, Chief Justice R. S. Naik of the Hyderabad High Court, who was so punctilious that when the bell rang, though his colleague did not join him, he went and sat on the Bench alone looking at the case papers. His colleague who came a few minutes later got onto the Bench with apologies. Thereafter he never came late. He, if at all, used to come five minutes early, to the Chief Justice's Chambers. Even after the Andhra Pradesh High Court was formed, when one of the judges who was to have sat with the Chief Justice was late, the Chief Justice dissolved that Bench and sat singly by going onto the Bench in time. I don't think he sat with that Judge again. It may also be interesting to note that when I went to the Supreme Court in 1969, what was being said at the time was that a Judge of one of the High Courts who, though junior to several others, being punctual and regular in attending the Court, was preferred and appointed to the Supreme Court. In that High Court it was said that many judges were unpunctual, and irregular and would get down from the Bench by adjourning cases whenever they felt like it. In contrast, this judge though junior was the most punctual and regular among

those who were seniors to him and this was taken into consideration in elevating him to the Supreme Court. I do not know what the present situation in our court here is, though one hears a lot of comment in respect of this and other matters. There is nowadays talk that we have inherited our judiciary from the colonial system, and that it is a worn out system and will not serve the poor people etc., etc. What other system is in the mind of persons who contribute to this thinking is never clearly stated. Is it a system which dispenses with the basic rule *Audi alteram partem* – 'Hear the other side' or is it a system which quickly disposes of cases and causes like what is said to be happening in Iran. Surely poverty and the judicial process to which we are wedded are not antithetical. Men have lived in changing environments for over five thousand years and have thought that their early days were always better than the days they were living in. The fact is that social conditions change, the law changes and judges reflect their times in their judgments. Even when the colonial concept of binding precedent is adopted, the language of that precedent cannot but mean what the words mean to-day, which is different from what they meant yesterday. The postulate that is well-ingrained in those administering justice is that law should not become alienated from the movement of ordinary life.

In respect of administrative matters, the Chief Justice allotted each judge a District to look after. This means all admissions from that district were to be presented to the judge in charge of the district. He would also go on inspection tours of the district. I was allotted Guntur District, the busiest and the most difficult, with intricate and tenacious litigation. Apart from this as a member of the Administrative Committee all papers whether from Telangana or Andhra would move from me. In regard to matters concerning Andhra Justice N. D. Krishna Rao was the member. All papers would ultimately be presented to the Chief Justice. The committee and the Chief Justice would decide what matters would have to go before the judges' meetings. Matters like promotions, disciplinary proceedings, etc., would certainly be placed before the judges' meeting. I had the burden of all administrative matters till I became Chief Justice and thereafter till I left the High Court for the Supreme Court.

Soon after the Andhra Pradesh High Court began to function, Manohar Pershad, the seniormost judge from Telangana proposed the presentation of a memorandum to the Government of India. The whole lot of us (Telangana judges) though seniormost having been appointed as judges of the erstwhile Hyderabad High Court, and who were senior to the last appointee of the Andhra

High Court namely N. D. Krishna Rao, were made juniors to him. This was irrespective of the fact that the seniormost among us, Justice Quamar Hassan appointed in 1942–43, Manohar Pershad and Mohammed Ahmed Ansari appointed in 1946, and even I, the juniormost of Telangana judges appointed in 1952, were seniors to N. D. Krishna Rao and Justice Sathyanarayana Raju who were appointed in 1955 or so. But as I said all of us *en bloc* were made juniors to them when we became judges of the Andhra Pradesh High Court on 1 November 1956 from which date our seniority vis-a-vis the judges from Andhra was considered, though as a group the *inter se* seniority between Telangana judges was maintained.

What was done in respect of our seniority was what had taken place earlier when Oudh chief court at Lucknow was abolished and the judges of those courts became judges of the Allahabad High Court. The seniormost judge of the Lucknow Bench who was senior to many of the Allahabad judges was made junior to the juniormost of those judges. The basic principle upon which this was given effect to was the decision of the Privy Council which held that when a service or office is abolished, the person occupying it has no longer any claim to the service or office, and if he is appointed to any other service or office, he will be considered juniormost in that service or post. My view, however, was not accepted by my brother judges though both Quamar Hassan and Ansari did not express any view. We all went and saw Chief Justice Subba Rao who very courteously said that he would forward our representation to the concerned authority. While talking to us he turned towards me and said, Jaganmohan Reddy you will certainly not be affected.' I understood what he meant, namely that I had a chance of becoming Chief Justice because of my age. I did not reply to this remark. Ultimately, the Government of India wrote to each of us that our representation was considered and filed or something to that effect. Another matter arose out of this reorganisation. I received, a letter from Chief Justice Subba Rao asking me to forward my school certificate where my age was recorded. I was very upset at this and immediately wrote to Subba Rao that I was a judge appointed in 1952 under the Constitution of India and my date of birth was corrected even when I was Deputy Secretary (Law) to 23 January 1910 though my school certificate showed it as 5 September 1910 (making me nearly eight months younger). While enclosing the school certificate I said, I have no objection if my age is taken as per school certificate though my correct age was the one now on record. On receipt of this letter Subba Rao rang me up that he knew from the tenor of my letter that I was hurt. He told me that this was not

meant for people like us, because ‘evidently there were lot of complaints at the time when S. R. Das Chief Justice of India came to Hyderabad that the age of Quamar Hassan was not correct and that he was much older than the age given by him. In order to get over this criticism Chief Justice Das requested the Chief Justice of A.P. to call for the school certificates of all Telangana judges who became judges of A.P. It was only in that context that the letter was sent to all of us. Ultimately, the proposal of Chief Justice Das did not yield any result because Justice Quamar Hassan replied that he was a student of Islamia College, Lahore now in Pakistan. Though he had written asking for the certificate there was no response to his request in spite of several reminders. In view of this when Subba Rao was elevated to the Supreme Court of India, before he left he returned all our school certificates. The matter ended there.

9

Chandra Reddy, Chief Justice

In January 1958, Chief Justice Subba Rao was elevated as a judge of the Supreme Court and took office on 31 January 1958. The next senior judge, Chandra Reddy, was hoping to be appointed as a permanent Chief Justice in his place, but to his great disappointment he was appointed to discharge the office of a Chief Justice under Article 223 as acting Chief Justice. To discharge these duties there is no need to administer an oath of office which is only prescribed for a person appointed as Chief Justice of the High Court. Chandra Reddy seems to have persuaded the Governor to issue invitations to the swearing-in ceremony of Chandra Reddy as an acting Chief Justice. It was a very big function. Subsequent to this swearing the Ministry of Home Affairs pointed out that no judge discharging the functions of a Chief Justice as an acting Chief Justice under Article 223 should be administered the oath of office. Subsequently Chandra Reddy was appointed as Chief Justice and this time there was another swearing-in function. Chandra Reddy had the longest tenure as Chief Justice of Andhra Pradesh of six and half years until transferred as Chief Justice of Madras on 1 July 1964.

I had known Chandra Reddy as a practising lawyer during my days of practice in 1938 to 1941. Though he did not have the advantage of wealth and riches, he soon made a mark as an advocate by dint of hard work and application. In a bar which boasted of several legal luminaries and where vested interests were strong and competition keen, Chandra Reddy by perseverance, grit, indefatigable industry and charm of manner established himself with a large volume of work. No doubt in a competitive profession there are always aspersions by members

against one another such as that they canvass work etc.

Even where some do, unless they inspire confidence in their clients, they are not successful. Chandra Reddy was appointed Crown Prosecutor in 1946 and was the author of two books: *The Madras Agriculturists' Debt Relief Act* and *The Hindu Religious and Charitable Endowments Act.* Within a month and half he had appointed two judges: Justice Seshachalapathi, a distinguished lawyer and a government pleader and another, Sanjeeva Rao Naidu whom he did not know as he had never practised in the High Court but evidently the Chief Justices of the Supreme Court were interested. Sanjeeva Rao Naidu was an advocate practising at Elore but when war broke out he joined the forces, and became Judge Advocate to the Navy. He was distantly related to Subba Rao, whose daughter was married to Sanjeeva Rao's son-in-law's brother, a doctor practising in Delhi. Sanjeeva Rao's son-in-law's brother, though not one of the judges' doctors who were from Central Government Health Scheme of which all Judges and Chief Justices were members, used to attend Chief Justices and judges at the instance of Sanjeeva Rao. In this way Sanjeeva Rao was able to get his name suggested by several chief justices. Subba Rao resisted on several occasions but ultimately had to recommend his name subject to his successor Chandra Reddy approving the recommendation. Chandra Reddy recommended him along with Seshachalapathi as additional judges. Seshachalapathi was appointed on 12 March 1958 and Sanjeeva Rao Naidu on 13 March 1957. When there was talk about Sanjeeva Rao's appointment being proposed by Subba Rao as he was his relative, the part played by Chendra Reddy in approving the proposal and his recommendation did not escape criticism. He was considered to have submitted to the Chief Justice of India's recommendations without knowing anything about Sanjeeva Rao's capabilities or suitability. Chandra Reddy could have said that as he did not know anything about Sanjeeva Rao Naidu, but if the Chief Justice recommended him he would accept his recommendation. Whether this would have satisfied the requirement of the constitutional provision is another matter.

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Before I discuss the outcome of one of these appointments, I must tell of an interesting voyage that my wife and I undertook in the vacation of 1958, within months of Justice Chandra Reddy's appointment as Chief Justice.

My wife and I wanted to visit East Asia and made arrangements with Messrs Messageries Maritimes, a French shipping company, to go on a cruise to Japan. An economy class cabin for two with a bathroom and balcony cost Rs. 2500/-

each for the return trip from and to Bombay, stopping at Colombo, Singapore, Saigon (Vietnam), Manila, Hong Kong, Kobe and Yokohama. In each place the ship would stop for two days, except for Saigon, where it would stop for three days. While returning it would halt for the same periods. We could use the ship as our hotel. The ship was named *Camboge* (the French word for Cambodia) and weighed 16,000 tons.

We were able to take this trip because fortunately my mother-in-law had been staying with us and my three sons and my daughter, all over 11 years old, could be looked after by her in our absence. Under government regulations each of us was allowed to take only Rs 270/out of the country. We were advised not to exchange our rupees for foreign currency, because the rupee at that time was strong compared to the currencies of the countries we were visiting. As I was connected with Osmania University as a member of its Syndicate and as Dean of the Faculty of Law, I requested the Registrar of Osmania University to write to the Registrars of the Universities of the countries we were visiting and to inform them that I would be interested to visit their respective universities. The Registrar accordingly wrote to the Universities giving our programme. In this way we would be hosted and shown the places we were visiting without the expenditure which we could ill afford on the meagre amount we were allowed to take with us. Apart from this, some friends of ours wrote, one to a relative in Saigon, who was an Army Officer attached to the Vietnam Peace Commission, and others to Hong Kong where their relatives were enterprising businessmen. At Colombo I had friends whom I knew from my days as a student in England. Derrick De Seram from Oxford University was a cricket Blue and a barrister practising at Colombo. His sister Jill De Seram was later married to a doctor with a flourishing practice in Colombo. I wrote to them. They were good enough to meet us at Colombo, even though for some reason our ship could not dock but remained on the open sea. Even so Derrick came over to meet us. He, his sister Jill and her husband were good enough to host us, to take us to their respective homes and show us round the city. The Registrar of Peradeniya University (University of Colombo) also came and showed us round.

They had a beautiful campus. Derrick took me to the High Court where the Judge hearing a sessions case was dressed in a scarlet gown and a wig. What struck me most was the manner in which the court translator would translate from English into Sinhalese or Tamil according to the language of the witness. If the lawyer put a question in a bullying tone, the translator also acted in the same

manner, putting the question to the witness in his language with the same gesticulation as if the translator was putting the question in that language. We enjoyed a stay of a day and half and promised to meet them again on our return trip.

We then visited Singapore. The approach through the hills with beautiful scenery was most pleasant. There we were received by the Registrar and another friend of mine Mr Donneto whom I knew well. He was also a lawyer practising at Singapore. Singapore was most beautiful, orderly and clean. The police were well disciplined, polite and firm. They were no respecters of persons—all were treated equally. Here also I visited the court. The judges hearing cases were robed like those in England. The arguments were in English and the whole proceedings were dignified and courteous.

Our stay at Saigon was equally educative. The army officer Major Singh received us and took us round. Saigon was like a minor Paris. The roads and streets were beautiful, straight and clean. We noticed many propaganda advertisements for the President of South Vietnam who was somewhat of a dictator. Vendors and porters walked with a bar over their shoulder, at each end of which there were receptacles to carry the goods. Even teapots, coffeepots and stoves to make the hot beverages were carried thus. A conical straw hat was the common headgear. The shopping was cheap as the U.S.A. which was supporting South Vietnam was financing their imports by subsidising them. I bought a pair of black trousers for Rs. 10/-. I still have them and wear them. We visited Bien Hoa which was 30 miles (48 km.) from Saigon, to see a Buddhist temple. It was a beautiful one. It showed how Indian civilisation had spread to these places. We came across Indian mythological names such as Garuda.

We were also invited to the Indian army club where our army officers on the Vietnam Peace Commission would be meeting. We were treated to a dinner. From these officers we came to know that the situation between North and South Vietnam was not good and hostilities could start at any time. It was American intervention in the South, and Chinese Communist support to the North, that kept up the tension. One incident in Saigon disappointed me. That was our visit to the Indian Consul. Not having visited a foreign country after we gained independence, I was anxious to call on the Consul representing our country. My wife was not in favour. She said these persons would make us wait and we would waste our precious time which we could spend seeing places. She turned out to be right. After sending in my card with my designation as a Judge I was

made to wait for nearly an hour. At the end of this I sent a chit to say I had only come to pay a courtesy call on a representative of our country and had no work with him. Having waited, we were going away. The next morning the Consul Mr Gupta, I believe a teacher in a college before he was selected as a representative of India, called on us to apologise. I gave him a piece of my mind and told him that such an attitude would only bring down the prestige of our country. He invited us to come and have a meal with him but as we were already engaged we excused ourself. Anyway after having a wonderful time over all during our visit, we left for Manila.

I must mention two matters. One was that, since we had a restricted allowance and could not afford to purchase much, we took along many things: eatables, lemon and orange squash bottles etc. My wife took changes of clothing for 45 days in our cabin trunks. There were facilities for washing and ironing to some extent so we could carry on without incurring any expenses. On the outward journey, there were a lot of French passengers on the ship, as Vietnam was once under the French. These persons were very reserved and some of them did not know English. I believe they used to admire my wife every day when she wore a fresh sari. These sarees were multicoloured and looked very elegant. Another matter which we noticed was that at each of our meals, lunch and dinner, two bottles, one of white wine, the other of red, would be put on the table. Since neither of us drank we told the *garçon* (attender) so, but he insisted on opening the bottles. I believe if the bottles were opened, and anything was left behind the *garçon* could take it. Hence these bottles were opened so that the person who attended on us would enjoy them. The food was excellent and we enjoyed all our meals. The captain also invited us to one of his dinners where we met quite a few passengers.

At Manila we went to the President’s Palace and saw what a luxurious and elegant place it was. The President and his wife who dominated the President and the country were very much talked about. There was an undercurrent of hostility against them. It was curious for me to note that each college was called a University so there were as many Universities as there were colleges. The people of Manila were very devout Catholics. From Manila we went to Hong Kong which we liked the most for many reasons. Though we stayed only a day or two our Hong Kong trip was more enjoyable than any other except the one to Japan.

At Hong Kong we were received by the Registrar of Hong Kong University and

the son and relatives of Mr Bhownani, Director General of Jails at Hyderabad whom I knew well. The Vice Chancellor invited us to a lunch at which the Chief Justice of Hong Kong was also present. Hong Kong being a shopping centre my wife was not in favour of these engagements. But I told her, one of the ways of getting to know how a Crown Colony was being governed from so far, from London, and the reason why many of the citizens whether Indian, Chinese and of other nationalities were happy, prosperous and friendly, was to meet as many sections of the people as possible. When we were going about in the narrow lanes of Hong Kong we saw some film shooting going on. On enquiry we found that a film starring the famous actor, David Niven, was being shot in the streets of Hong Kong. He had to act the same passage several times. Since I had a small 8 mm cine camera with me, I also took a few shots of the part being acted. When I showed these to the children and friends they enjoyed them.

Hong Kong attracted me not only because of its commercial activity but because of the maximum tax rate fixed which makes tax collector's harassments redundant. I was told that the maximum income tax rate was between 12 and 14%. There was therefore little effort made by the commercial community to make black money or devise ways and means of avoiding taxes. At the time we visited Hong Kong our rupee as I said was strong and for rupee payment, things could be got cheap. I bought one suit, two pairs of trousers and one coat, all of tussore silk, for Rs. 150/-, which appears unbelievable. The Chinese tailor gave me these clothes within 24 hours and they fitted me perfectly. I have still these clothes with me and have worn them all these years.

From Hong Kong we went to Kobe where we were met by Japanese Law professors from Kobe University. They greeted us by presenting us with silk scarves. These professors were greatly interested in Hindu law and the institution of the Hindu joint family. I had a very interesting discussion with them. They took us round and showed us Kobe. They took us to see some of the scenic beauties and for a ride on a rope railway, which had cable cars going in two opposite directions. Each of the cars could easily carry about twenty persons. It was not only thrilling but fearsome to look out of the car at the ground which seemed about a mile or two below. Kobe was a very busy port. From Kobe we went to Yokohama which is the port for Tokyo. After we landed we took a coach ride to Tokyo which was about twenty miles away. The lady bus conductors not only gave us a running commentary in English on the places we were seeing, but entertained us quite a few times by singing melodious songs in Japanese.

In Tokyo we were taken out for sightseeing. We visited important places including the Imperial Palace where the Emperor lived. The Japanese showed the highest regard for their Emperor, and many would make their obeisance while passing by the Palace. The multi-storeyed shopping centres were a shopper's paradise. At one stage my wife was so engrossed in seeing things and admiring them that a message had to be sent to us through the loudspeakers that the bus to take us back to Yokohama was waiting for us and that it was getting late. On our way we were taken to Kamakura where there was a large statue of Buddha. We could climb up to the top of the statue from the inside. I believe there was once a big shed over the Buddha but a severe typhoon blew it off. Since then it has no cover over it. The figure of Buddha was very impressive.

Our trip to the Far East was enjoyable, educative and exciting. We travelled back the same way with different fellow passengers, mostly Americans whose frankness and openness was a contrast to the manner of our companions on the earlier trip to Tokyo. We made some good friends and some of them corresponded with us for several years. We arrived back in Bombay on 18 June 1958. As there was a strike the ship was anchored on the high seas. My cousin P. M. M. Reddy who was a Captain in Air India flying on the Bombay-London route came over in a Customs boat and took us ashore with the least inconvenience. At the Bombay port the Customs Officers asked us what was in our two big cabin trunks. When I told them that they were full of soiled linen, they were surprised. We said since they had given us so little money to take with us, we could not afford to have our clothes laundered. When they asked us to open the trunks they found our statement true. On our return we found that everyone was well and the children were excited with the small presents we could bring for them.

* * *

Sanjeeva Rao Naidu's tenure as a judge of the Andhra Pradesh High Court was troublesome. He was tall, hefty and dominating, and he showed little regard for his brother judges and was at times inclined to be garrulous. The very first occasion after he took the oath he made it known that the Supreme Court Chief Justice chose him in order to put things right in the Andhra Pradesh High Court. No one in his right mind would believe that any Chief Justice would assign such a job to one of the juniormost judges and that too an Additional Judge. One could take such remarks as made to give himself importance. On the Bench also he gave cause to his colleagues to resent his behaviour. Somehow he seemed to

get along well with me. Even when I disagreed with him and he thought I had used strong language in my dissent which I did, he would request me to revise it. I told him it was not my purpose to hurt him. If he showed any passage or passages which hurt him I would immediately revise it or them.

He had a tendency in criminal cases to rely on the statements in the case diary as if these were to be taken as substantial evidence. The Madras High Court acting on *Athappa Goundan vs. the King*, (ILR 1939 Madras 965) used statements made by an accused which resulted in the discovery of a fact, as evidence, including the entire statement that 'I killed the deceased by gagging with cloth and throttling his neck by hands and also by putting a rope and pressing it… they got two bottles of arrack and he buried the empty bottles, a rope and the cloth ……. in the dunghill next to the cattle shed …..' If as a result of the statement of what the accused did, if the deceased was killed by gagging him and throttling him, the whole of the statement was held admissible. On the decision referred, the Madras High Court had convicted many murder accused who were hanged. Justices Burn and Stoddart, both I. C. S judges earned their names as executioners. Later, however, the Privy Council laid down the law and disapproved *Athappa Goundan vs. the King.* Sanjeeva Rao Naidu apart from using the case diaries also used the entire statement under section 27 of the Evidence Act. Sanjeeva Rao either completely ignored or was not aware of the judgment of the Privy Council in *Pulikuri Kottaya vs. the Emperor* (AIR PC 1947: 67) which overruled *Athappa Goundan vs. the King.* In a dissent on the use of such statements I said much water had flown under the bridge since *Athappa Goundan vs. the King* and referred to the Pulikuri Kottaya case which had overruled that of Athappa Goundan. In Kottaya's case their Lordships observed: 'Knives were discovered many years ago … and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words "with which I stabbed A" are to be added, those words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.'

It appears when Chief Justice of India Bhubaneshwar Pershad Sinha visited Andhra Pradesh it was stated by one of the judges that Chandra Reddy was posting criminal cases only before the benches of Basi Reddy and myself. The Chief Justice of India asked Chandra Reddy if that was so. Chandra Reddy told the Chief Justice that that was not so. When Basi Reddy was told this by Chandra Reddy, Basi Reddy requested him not to post any criminal cases before

him and advised him that in future referred trial cases should be posted before another judge and Sanjeeva Rao Naidu. This advice was followed. Soon the other judge began to complain that Sanjeeva Rao Naidu insisted on death sentences being passed in murder cases where the accused was convicted. In case of the senior judge insisting that lesser sentences should be passed Naidu used to say they should do their duty and not hesitate in such cases, etc. The matter had come to such a head that the other judge went to Chandra Reddy and said Chandra Reddy, do you want to kill me?' On enquiring, he said Sanjeeva Rao always insisted on death sentences being given and death warrants being signed. Chandra Reddy told him that as a senior judge, or even if he were not so, he could for reasons stated disagree with Naidu. Anyway Chandra Reddy changed the bench.

In another appeal against the conviction of the accused on charges of several fraud cases in the electricity department, which Sanjeeva Rao heard for over nine months he acquitted the accused. In a judgment of nearly 800 pages he also mentioned that a pregnant lady advocate who appeared in the case gave birth to a child during the hearing. This case went up to the Supreme Court against the order of acquittal. The Supreme Court set aside the judgment and directed the High Court to hear the case afresh. Chandra Reddy wanted to post the case before me. I said having regard to the complaint of a colleague to the Chief Justice of India that criminal cases were posted before Basi Reddy or myself I would prefer him to post it to a Bench of which I was not a member. Chandra Reddy said this case had already taken nearly a year to hear before the High Court. The time taken before the Trial Court, the High Court and the Supreme Court, if added together had already consumed considerable time, and so he wanted me to take it up as it would be disposed of in short time. In the interest of the functioning of our High Court I agreed. When the case came up before me I asked the defence advocate and the Public Prosecutor to take up three cases out of over a dozen or so cases which they would like me to hear. Since in all the cases the accused was alleged to have followed the same *modus operandi*, the group of cases could be disposed of on the determination of these three cases. Both the advocates for the defence and the Public Prosecutor agreed. The case was taken up one Monday, completed on Friday and judgment was pronounced by me on the following Monday, convicting the accused in these cases. I sentenced the accused in each case to three years, the sentences to run concurrently. There was no appeal against this judgment and the matter ended there.

Sanjeeva Rao took a residential house in Banjara Hills as a tenant and got himself into litigation with the landlord. It was alleged that he would not pay the rent and when it was demanded he said he was setting it off for the improvements, additions and various other conveniences he had got installed in the house. The landlord said Sanjeeva Rao had no business to make all the additions and improvements as those were not included in the terms of his lease. The landlord went to Rent Control Court against Sanjeeva Rao, his tenant, for vacation of the premises and for arrears of rent. Sanjeeva Rao would not appear. His name would be called "Sanjeeva Rao Naidu Hazer Hai" (Is Sanjeeva Rao Naidu present?) three times. Ultimately the case was decided against him *ex parte*. Sanjeeva Rao appealed. Before his appeal came up for hearing, he, sitting in a single Bench decided another rent control case in a manner which would help his case. This case came before a Bench of which I was a judge. I reversed the case.

Yet another glaring oddity was his habit of putting his face out of the window and shouting at an oncoming car 'get out of the way, get out of the way', when driving his car with a High Court flag to the Court or to any other place. The public began to resent this conduct of a judge.

One day he attended a judges' meeting in a highly excited condition and during the discussion of a matter brought before it he shouted at Chief Justice Chandra Reddy which surprised all the judges. All of them for fear of Sanjeeva Rao treating them similarly kept quiet. I was quite upset. I told Sanjeeva Rao: 'This is not the way you should conduct yourself in a meeting of brother judges. Particularly you should not behave in that way towards the Chief Justice. 'When I asserted myself, he calmed down and said he was sorry. In any case he managed with his influence with the Chief Justice of India to get himself transferred to Guwahati High Court in Assam. There he would get an opportunity of becoming a Chief Justice. His transfer was felt as a great relief. His conduct there in the Guwahati High Court is not a part of my narration relating to this period.

After the States' Reorganisation, the people of Marathwada area which was integrated with Bombay like Telangana was integrated with the Andhra area, were agitating for persons from Marathwada area being appointed as judges of the Bombay High Court. Chief Justice Chainani of Bombay High Court wrote to Chandra Reddy that Chief Minister Yeshwant Rao Chavan wanted him to recommend two persons to be appointed as judges from Marathwada. Since he

did not know any one practising in Marathwada coming up to the standard of being appointed as a judge, he wrote to Chandra Reddy asking his opinion about Gopal Rao Ekbote and Vinayak Rao Vaidya who were from that area when Hyderabad High Court was in existence. Chandra Reddy called these persons and asked them to give full details about themselves, date of birth, date of enrolment, period of practice, the income they were earning, etc.. After these were given by the two persons above named, Chandra Reddy recommended Gopal Rao Ekbote. As for Vinayak Rao Vaidya, he said he required some more time before he could be recommended. After Chandra Reddy had conveyed his views to Chainani, Ekbote tried through Minister of Law Datar to get himself appointed as a judge of the Andhra Pradesh High Court instead of the Bombay High Court as it would be more convenient for him. He had lived in Hyderabad for several decades and all his relatives and assets were there. Chandra Reddy was thus pressurised, and he agreed. It was said his decision was influenced by what he was told, namely, that Ekbote was a nephew of Gajendragadkar who had by then became the Chief Justice of India. Gajendragadkar denied having any relationship with Ekbote. However, Sanjeevayya, the then Chief Minister, was against Ekbote's appointment on the grounds that he was a politician and had been a Minister in Ramakrishna Rao's ministry and had later taken part in the agitation along with Chenna Reddy against Sanjeeva Reddy after Andhra Pradesh was formed. As long as Sanjeevayya was the Chief Minister Ekbote was not appointed but when Sanjeeva Reddy came back the appointment went through after Chandra Reddy had called upon Ekbote to furnish the details of his career, age of birth etc. which he did. Ekbote was thus appointed as Additional Judge on 1 June 1962 and was made permanent on 12 February 1964. A few months later Chandra Reddy was transferred to Madras as Chief Justice.

10

Chief Justice Chandra Reddy's Transfer

There was much talk about Chief Justice Chandra Reddy being Reddy-oriented. It was alleged that he was encouraging the Reddys, particularly those who were his juniors. This impression gained a great deal of credence among all those who were adherents of the opposition as well as those who had hoped to be elevated, but had not been considered. Apart from this, it was also being given out that he was very close to the Chief Minister and the Executive. The matter came to such a pitch that Chief Justice Gajendragadkar decided to come over to Hyderabad to enquire into the matter. There were of course two factions: one consisting of those against Chandra Reddy, and the other of his supporters. Earlier Justice Sathyanarayana Raju, who was close to Subba Rao, and used to come to court together with him in the same car, started to come to court with Chandra Reddy after Subba Rao's elevation to the Supreme Court in 1958.1 used to keep myself away from any *inter se* conflict as I liked both Subba Rao and Chandra Reddy. Though I recognised the affection and regard shown to me by each of them, there was nothing that I could do but to keep myself from getting involved in any situation of conflict. When matters were getting critical, Justice Sathyanarayana Raju, after about five years, disengaged himself from accompanying Chandra Reddy each day to the court. Each one from then onwards went back and forth from court in his own car. When Chandra Reddy was informed by Gajendragadkar that he would be visiting the Andhra High Court, it was decided that he alone should go to receive him at Secunderabad station. Chandra Reddy sent for me in the lunch hour. He asked me whether he

should not garland the Chief Justice in the station. I told him that Gajendragadkar was coming on an enquiry into matters relating to our High Court, and would not like to be garlanded. It was best to receive him without any fanfare. Chandra Reddy did not agree with me and said that as it was customary to receive dignitaries with a garland Gajendragadkar might take it amiss. I told him that I had given my view but it was up to him to adopt whatever course he wished. Chandra Reddy took two garlands, perhaps one on his own behalf and the other on behalf of the judges. Just as he was about to garland him, Gajendragadkar, with a wave of his hand, pushed the garlands away. This scene took place in the presence of the Registrar and other members of the staff and must have been galling. In my view the action of Gajendragadkar was unbecoming and humiliating to the Chief Justice. He could have dealt with the gesture quietly, by not allowing the garlands to be put over his head, but taking them into his hands. I felt justified in giving Chandra Reddy my advice and in warning him. After the Chief Justice's arrival, he told Chandra Reddy that there were complaints about him and he wanted to ascertain the truth about them. He then asked him to give him twenty names of advocates whom he could talk to. Instead of telling him to ascertain with the help of others the persons with whom he could talk, Chandra Reddy promptly gave him twenty names of whom nearly eighteen or so had spoken against him. The Chief Justice also seems to have talked to a few judges. The next day in the evening when Chandra Reddy gave a dinner in his house to the Chief Justice, I was invited along with all the judges. At the dinner I kept myself far away from the Chief Justice. Having spied me at the other end of the hall, he walked across and said he had not seen me till then, and enquired after me. I said since he was busy I did not want to disturb him. He said certainly he was not so busy as not to see me. I said I would be happy to call on him if he should have the time. He said of course, he would phone me and let me know when I could go and see him. Sure enough as soon as I reached home that night he phoned me asking me to see him at 9.00 a.m. the next day at Raj Bhavan where he was staying. The next day I met him. After enquiring about me, he told me the purpose of his visit and said there were a large number of complaints from the members of the Bar and others about the manner in which Chandra Reddy was dealing with matters of appointment and his close relations with the executive etc. He said Chandra Reddy had put up the names of three persons,two of whom were his juniors. Ever since he became Chief Justice these persons were favoured and helped to come up and now he had proposed their names for appointment as judges of the High Court. There was a great deal of

dissatisfaction from the Bar about these proposals, so much so that even the persons suggested by Chandra Reddy and with whom he had a talk complained about his partiality. When he mentioned these two names I said even though I didn't come from the Andhra area from which the two advocates came, I found them capable and able. One of them had got distinctions in his law degrees and had earned a gold medal. He had been appointed as a government pleader. The other was equally capable, had earned a good name and was now the public prosecutor.Gajendragadkar asked whether the persons would have been appointed as government pleader and public prosecutor, without Chandra Reddy's help. I said it was for the government to appoint them. All the same, I was impressed by their work and they were justifying their appointment. He said could they have come up without the help of Chandra Reddy. I said that they were his juniors and after his elevation they had struggled and come up by themselves, particularly after the formation of Andhra State when all the Tamil seniors who had a monopoly of work from both Tamil and Andhra areas, were not able to practise. In view of this, particularly in view of Subba Rao's strictness in not granting adjournments these and other young persons had come up by themselves. I also said a person can be given a chance once, but to take advantage of that chance and come up, shows that they did so on their merit. It is a credit to those to whom the chance was given. I said I have known people who were given a first chance, say in an appointment, but they became a nuisance, as every time they did not get some promotion or were transferred, they troubled you. Such people never get anywhere as they want to be helped at every stage. If you don't help them they begin to malign you. Gajendragadkar then turned round and said what about the third candidate. Here I couldn't support Chandra Reddy's choice, though as a person the advocate mentioned was a good man. He said 'See, if I had accepted the recommendation I would have been criticised for agreeing with it.' Somehow, the way in which the whole enquiry was conducted brought down the reputation of the court. The result of the enquiry took some time to come out. One day Chandra Reddy phoned me and told me that the Chief Justice of India had phoned him just then and informed him that he was being transferred to the Madras High Court as its Chief Justice. When Chandra Reddy told him he didn't want to go, the Chief Justice seems to have informed him curtly that he had no choice and he would have to go. I was very upset at the peremptory way in which the Chief Justice had treated Chandra Reddy. I suggested that he should phone him and say he would go on leave and was not willing to be transferred. Chandra Reddy evidently was not in favour of this

course. I said that it was for him to decide, but if I were in his place I would adopt this course without hesitation. It turned out, that after the Chief Justice had sent his report and proposed Chandra Reddy's transfer Prime Minister Lai Bahadur Shastri took no action for some time. The Chief Justice kept on pressing the Prime Minister to take action but the Prime Minister assured the Chief Justice that action would be taken but at the proper time. The Prime Minister was waiting for the Governor of Madras Shri Jayachamarajendra Wodeyar to go on leave as he wanted to fulfil a lecture invitation in America. I am not certain whether he was resigning or going on leave but once he went on leave or vacated the office Chandra Reddy as Chief Justice of Madras would immediately be made the acting Governor of Madras. It was evident that this proposal was perhaps made known to Chandra Reddy so that his consent to the transfer would not be difficult to obtain. After the notification appointing Chandra Reddy as Chief Justice of Madras and Justice Sathyanarayana Raju as Chief Justice of Andhra Pradesh, a big farewell party was given to show that there was no real complaint against Chandra Reddy, and that he was being transferred with his consent as Chief Justice of Madras. In any case the proposals for appointment of three judges sent by Chandra Reddy did not come through and the vacancies to be filled up were left to his successor.

It must be said in all fairness that Chandra Reddy as Chief Justice from 1958 to 1964 proposed and was responsible for the appointment of a dozen judges who were all non-Reddys. Out of these six were Brahmins, four were non-Brahmins and two were Muslims. It would therefore be unfair to say he was Reddy-oriented but he was being blamed merely because he had proposed two Reddys who were his juniors but who were holding official government positions as government pleader and public prosecutor. The problem with Chandra Reddy was he gave the impression of being close to Executive Power but I think even here it would be unfair and unjust to say he always favoured the government. However, a Chief Justice, or for that matter even a judge, should as far as possible keep himself free from any suspicion or doubt that he is too close to the Chief Minister or any other minister, or to the Executive.

11

Appointment as Chief Justice

There is an interesting Telugu story regarding the lame excuse invented by a fellow caught red-handed while tapping someone else's toddy tree. The story goes that the fellow, before climbing the tree, asked his friend to stand by to alert him in case the owner of the tree happened to arrive. As ill-luck would have it, the owner of the tree soon arrived on the scene wielding a stick. 'Who is there?' shouted the owner, 'Bonku bonku ra (I say, blurt out something)' the fellow on the tree exhorted his friend below. The friend got panicky and came out with an explanation: 'He has climbed the tree to cut grass for the cat!'

This story came to my mind as I settled down to write about my becoming Chief Justice and the preceding abortive manoeuvres and manipulations to get me transferred to facilitate the appointment of the next senior judge — in whom the then Chief Minister was very much interested — as Chief Justice. For the points canvassed against my elevation as Chief Justice were as ridiculous as saying that grass grows on the top of toddy trees and that cats eat grass!

I have earlier stated that those judges of the Hyderabad High Court who were drafted to the Andhra Pradesh High Court consequent on the disintegration of Hyderabad State, became junior to the junior-most of the Andhra High Court judges. Their prospects of becoming Chief Justice were, therefore, affected adversely. However, my dear friend, Justice Mohammed Ahmed Ansari was transferred to the Kerala High Court where he soon became Chief Justice. His transfer was proposed by Shri Burgula Ramakrishna Rao, Governor of Kerala (former Chief Minister of Hyderabad). Shri Ramakrishna Rao got in touch with the Andhra Pradesh Chief Minister, Shri N. Sanjeeva Reddy and proposed

Ansari's transfer to the Kerala High Court. Sanjiva Reddy conveyed the offer to Ansari who accepted it after consulting me. With his amiable disposition and erudition Ansari earned a very good name in Kerala.

When Justice Chandra Reddy CJ. was transferred to Madras following an enquiry, the speculation was that his successor Sathyanarayana Raju would, after a brief spell as Chief Justice, be elevated to the Supreme Court facilitating the appointment of Manohar Pershad as Chief Justice superseding N. D. Krishna Rao. The basis for this speculation was that Manohar Pershad knew the Chief Justice of India with whom he used to be in correspondence before his (Justice Gajendragadkar's) elevation as Chief Justice, and that N. D. Krishna Rao did not rate high in the opinion of the Chief Justice of India.

In the context of this speculation, which later proved correct, the transfer of Chandra Reddy to Madras encouraged the Andhra Pradesh government to make efforts to get me transferred. The grounds canvassed for my transfer were: (1) when I became the Chief Justice, all the three key offices in the State – Chief Minister, Chief Justice and Chief Secretary – would be held by Reddys; (2) my sister was Mayor of Hyderabad; (3) a relation of mine – Nukala Ramachandra Reddy — was a minister in the State cabinet and (4) my late father's cases were pending in the High Court.

All these points would not stand the slightest scrutiny and were untenable. The Chief Secretary at that time was not a Reddy. My sister was not the Mayor then but a ruling congress MLA. Nukala Ramachandra Reddy was, no doubt, distantly related to me but that could not be grounds for not appointing me as Chief Justice when my turn came. Lastly, my father had passed away on 3 June 1965 and had no cases pending in the High Court. The executors of his will — I was one but had declined to act as such — would perhaps make an application in the lower court for grant of probate of his will; that was all.

When the hollowness of these grounds was exposed, the judgment delivered by me sitting with Justice E. Venkatesham in *Nalla Raj Reddy vs. State of Andhra Pradesh* (1965 Andhra Law Times: 297) came in handy to beat me with. The case involving 47 writ petitions in which 32 lawyers, six of whom were later elevated to the bench, appeared while the third government pleader represented the State of Andhra Pradesh. The petitioners raised the question of the legality of the levy of additional land revenue assessment. The judgment examined thoroughly the history of the levy of land revenue – essentially a share in the

produce – and held the operative provisions of the impugned statute to be unconstitutional and violative of Articles 14 and 19(1) (f) of the Constitution. The reasons advanced in the judgment were: There was no indication in the impugned statute that the additional assessment was a share in the produce of the land; the quality-based classification of soils was not taken into consideration (as required) and, therefore, there was discrimination between individuals. The fixation of a minimum levy also showed that the levy was being imposed without reference to the quality and productivity of the soil, and the omission to provide the machinery for assessment and collection of levies was also a violation of Article 19 (1) of the Constitution.

Frustrated in his efforts to raise additional resources and piqued by my judgement, the Chief Minister sought to use it as an excuse to get rid of me even before I reached the stage of being considered for appointment as Chief Justice. One of the reasons could be that the Chief Minister and I did not know each other too well personally; we had only met on formal occasions.

Early one morning, the doorbell rang. When I opened the door, I was surprised to see the owner of the servicing centre where I used to take my car. Asked what the matter was, he told me that the previous day some MLAs had come to his car servicing centre and as their car was being attended to he overheard them talking about me. They said that the Chief Minister was much annoyed with my judgment in the land revenue case and was trying to get me transferred. I then realised that the manoeuvring to get me transferred had reached a point where it was freely being discussed by MLAs.

My caller was sad that when the turn for a Telangana judge to become Chief Justice was coming attempts were being made to transfer him so that an Andhra judge could be made Chief Justice. I pacified him saying that nothing like that could happen without the Chief Justice of India and the Prime Minister being consulted. He, however, did not appear to be relieved. By now Sathyanarayana Raju had become Chief Justice. I knew him well, having worked together since the inception of Andhra Pradesh High Court. I had a feeling that Sathyanarayana Raju’s attitude had changed since his elevation as Chief Justice.

I never thought he would not stand by me, since I had been helpful to him in sorting out some of his affairs when he was new to Hyderabad. Sathyanarayana Raju and Basi Reddy knew each other very well as they had practised together before the Madras High Court. For that matter I had known Basi Reddy since

1938 when I was practising before the Madras High Court. We were good friends going together regularly to the club even after he became a judge.

Incidentally, Chief Justice of India Gajendragadkar had met Sathyanarayana Raju when he came to Hyderabad to enquire into the complaint against Chandra Reddy. He has referred to him inadvertently in his autobiography, *To the Best of My Memory* as 'Sanjiva Reddy, Chief Justice of Andhra Pradesh'. Gajendragadkar had included Raju in the team of jurists which he was leading to visit the USSR along with M. C. Setalvad, C. K. Daphtary and Pathak.

As anticipated Sathyanarayana Raju was elevated to the Supreme Court in October 1965 and in his place Manohar Pershad was appointed Chief Justice, superseding N. D. Krishna Rao. I called on Raju as soon as the announcement of his appointment to the Supreme Court came. To my surprise, his son who conducted me to his room, was asked to close the door while leaving. After I congratulated him he told me that he was glad that I would be the Chief Justice after Manohar Pershad. 'What is the difficulty? Am I not next in line?' I asked. He replied that there had been difficulties but they had since been sorted out. He was very enigmatic and would not disclose anything more. I was a little upset to learn that after all, the talk of attempts to get me transferred was not without basis. Therefore, I felt that until I got what I was justly entitled to I could not take things for granted.

From Sathyanarayana Raju's place I went to Manohar Pershad and congratulated him. Manohar Pershad could have become Chief

Justice of the Bombay High Court had he agreed to his transfer to that court in 1956 but he had not wanted to leave Hyderabad.

One day soon after that, Basi Reddy and I went to the club and while we were talking I told Basi Reddy that it was believed a transfer was being manoeuvred for me, to facilitate his elevation as Chief Justice. Basi Reddy was visibly upset. He said if that was so he would tell the Chief Minister that he did not want it. He did see the Chief Minister later and told him so.

Subsequently, Shri C. Krishna Reddy, President of the Advocates Association, told me that when he met the Chief Minister, the latter referred to my judgment in the land revenue case and attacked it, and seems to have given an indication of my prospective transfer. Krishna Reddy warned him against any attempt to get me transferred. This was also heard by another advocate Kulasekhar Reddy who was waiting to see the Chief Minister. Kulasekhar Reddy passed on the

information to my son's father-in-law. Kulasekhar Reddy said he heard Krishna Reddy telling the Chief Minister: 'Take care. You know who would be the Chief Justice of India at that time? It will be Subba Rao. If you make any such attempt you will be disappointed.'

Obviously, Krishna Reddy's warning had the desired effect. The Chief Minister subsequently told my sister who was a Congress MLA in the Assembly: 'It is being said that I am against your brother. It is not so. Only I was cut up with his judgment in the land revenue case as it caused a loss of Rs.6 ciores to the State'. My sister replied that she did not know anything about these matters and diverted the conversation. It was clear the Chief Minister wanted it to be conveyed to me that he was not against me. Subsequent information confirmed that his proposal to get me transferred was rejected, and since then he wanted to mend his bridges.

All the fuss about my land revenue judgment was puerile as the government's appeal against it was dismissed by a five judge bench of the Supreme Court presided over by Chief Justice Subba Rao, approving in effect the reason and approach in my judgment *State of Andhra Pradesh vs. Nalla Raj Reddy* (AIR 1967 SC 1458).

A little digression here, I feel, will not be out of place. In May 1965 my father who had just turned 83 was suddenly taken ill and towards the end of the month went into a coma and finally passed away on 3 June 1965. Within a couple of days the High Court reopened after the summer vacation and despite the stresses and strains I attended the court regularly. When Chief Justice Sathyanarayana Raju made a complimentary reference to this I told him, 'My sorrow is private and I do not like it to interfere with my work in any way.'

After his elevation to the Supreme Court Sathyanarayana Raju had hardly worked for a few months when he was taken ill. He appears to have fainted in the court and went on medical leave. He was obviously ill even before his elevation to the Supreme Court because Dr S. Ramachander Rao, who used to treat judges, declined to certify that Sathyanarayana Raju was well enough to be appointed a judge of the Supreme Court. Dr Rao advised him against accepting the appointment as he was seriously ill. A certificate was then obtained from another Civil Surgeon, keeping his illness a secret.

In March 1966 I went to Delhi along with my mother taking my father's ashes for immersion at the Sangam (Allahabad), at Gaya and at Hardwar. On reaching

the Andhra Pradesh Guest House I was informed that Justice Sathyanarayana Raju had telephoned for me several times. We went and saw him. He looked weak and said he had some problem of platelets. From there we went to Subba Rao who was worried about Sathyanarayana Raju's health. He said he did not know Raju was ill even before going over to the Supreme Court. Nor did he know what the illness was. Next day we went to Allahabad, the city of judges. I met several judges including, of course, Nasrullah Baig and his brother Hameedullah Baig, my schoolmate and colleague in Cambridge. The two were sons of Nawab Mirza Yar Jung, former Chief Justice of the Nizam's *(Adalatul Alia)* High Court.

The significance of the Triveni Sangam in Allahabad was that it was the confluence of the Ganga, the Jamuna and the invisible river Saraswati. That Saraswati was not a river was explained to me when Justice Dwivedi of Allahabad became my colleague in the Supreme Court. He said the reference to Saraswati here was a reference to the Goddess of learning. It was because of the presence of a large number of scholars on the banks of the river it was described as a river of learning and included in the confluence. To me this explanation appeared more rational.

From Allahabad I went to Gaya where I performed pooja of the Shivalingam before immersing the ashes in the river. Performing *shradha* at the Shivalingam there, it is said, dispenses with the need to perform the *shradha* annually. When I went to immerse the ashes into the river Falgu I found all sand and no water. However, there was plenty of water below the sand. The water of this river is used for giving *tharpan* for wandering souls. From there we went to Hard war and then returned to Delhi. By this time Gajendragadkar had retired and Justice A.K. Sircar had taken over as Chief Justice. Sircar had only three months to retire. Gajendragadkar had, therefore, proposed the appointment of Subba Rao but the latter had refused to be considered in supersession of Sircar. So I thought when Subba Rao became Chief Justice, he would not countenance anybody's supersession.

Before leaving Delhi for Hyderabad I again called on the ailing Sathyanarayana Raju. Looking a bit depressed he began talking to me in a vein of regret for something he might have done to me. I tried to comfort him saying he should not bother about such things even as I would not bother about them. After we returned to Hyderabad we received the news of his death on 20 April 1966.

Before Subba Rao took over as Chief Justice of the Supreme Court on 29 June 1966, he visited me in Hyderabad. He assured me that nothing would materialise in regard to the attempts to get me transferred. He said all this talk of my transfer was aimed at making me seek the Chief Minister's good offices for elevation as Chief Justice so that he could take the credit when the appointment was made and I should feel obliged to him for it. Subba Rao was very happy at my firm response that I would rather resign than resort to such methods. Subba Rao wanted that unlike Chandra Reddy I should distance myself from the executive authority and not get too close to the Chief Minister and make people doubt my objectivity and impartiality. I assured Subba Rao that in my eighteen years term as a judge, I could claim, I never exposed myself to such doubts.

Before retiring on 8 July, Manohar Pershad, who evidently was grateful to Sathyanarayana Raju, against my advice appointed his son Rama Raju as Deputy Registrar. When he consulted me I had told him to leave it to me, as for him to appoint him a few days before he retired would lead to a controversy and cast doubts on his objectivity.

Some days before I took over as Chief Justice I lost my dear old friend Samiuddin, who had retired about a year before as District and Sessions judge. It was all the more poignant that he came to see me on Saturday 9 July, about nine days before I was due to take over as Chief Justice and expressed happiness that I would be doing so. As we were talking, he complained of a chest pain and asked for soda. But that did not help. I then got Coramin (a medicine taken for palpitation). But that did not have any effect. I rang up a doctor asking him to rush to my place and sent my daughter to fetch Sami's wife. The doctor arrived and gave him a shot of pethedrine but to no effect and Sami collapsed. I and my wife, who also witnessed Samiuddin collapse, were both shattered. On the advice of our neighbour Shri Akbar Ali Khan, we arranged to shift Sami's body to his residence. While he was looking forward to my becoming Chief Justice I was hoping to elevate him to the High Court bench. I did become Chief Justice though Sami was not alive to see it, but my hope of elevating him to the High Court remained unfulfilled. Inscrutable are the ways of fate. Sami and I were so close that when either of us was seen alone, people would ask where the other was.

On July 8, a day before this incident N. D. Krishna Rao had been appointed Chief Justice, with only ten days to his retirement. His appointment, it was believed, was sponsored by the Chief Minister, firstly, to propose P.

Ramachandra Reddy, Advocate for appointment as judge (a proposal made earlier by Chandra Reddy had been rejected), secondly, to constitute a bench favourable to the government to hear the case filed by D.S.Reddy, Vice-Chancellor of Osmania University, against the legislation reducing his term of office from five years to three, and thirdly, to undo the appointment of Rama Raju as Deputy Registrar. N. D. Krishna Rao fulfilled the first two objectives. The proposal for the appointment of Ramachandra Reddy was sent by Krishna Rao on his last day in office and was carried personally by the Chief Minister to Delhi, while the bench to hear D. S. Reddy's case was constituted even before notices were served on the Government and the case was ready for hearing.

Krishna Rao called for Rama Raju's file to undo his appointment but retired before he could see how he could do it.

On the morning of Sunday July 17 the doorbell rang and when I opened the door, I was surprised to find P.A. Chowdhari, a young lawyer who had good work in the High Court. He congratulated me saying that the morning newspapers and the All India Radio had carried an announcement of my appointment as Chief Justice. The next telephone call was from Sham Rao Harnur of the Press Trust of India who while congratulating me said some judges enquired the previous night if the appointment of Chief Justice had been announced and if so who it was. It looked as though they expected someone else to be appointed.

What with the continuous telephone calls and stream of visitors I hardly had time to get ready. My wife came to my rescue and took over the handling of telephone calls and the visitors. In the wake of the announcement, a swearing-in was arranged for 18 July at Raj Bhavan and invitation cards were issued. I received a congratulatory message from the Chief Minister. But a day later the Registrar informed me that no swearing-in would take place as my appointment was only as in-charge Chief Justice. I was surprised and immediately got in touch with Chief Justice Subba Rao in Delhi; he too was surprised. Later in the evening Subba Rao rang back to say I need not worry. The Home Minister (Nanda) had thought that his consent was enough for the President to approve the appointment but later it was found that the Prime Minister's consent was necessary. He told me that the papers had been sent post haste to the Prime Minister, then on a tour of Turkey and Moscow, and the announcement would be made as soon as the Prime Minister approved. Sure enough the announcement came around 23 July, but as the Governor, P. Thanu Pillai, was going to Kerala

to attend the centenary celebrations of his old school and would be back only in the first week of August, the swearing-in would be in August. If this were the case, it would make me junior to Justice Kotwal who was to be sworn in as Chief Justice in Bombay on 1 August. I suggested to Basi Reddy to administer the oath of office as the seniormost judge. The Chief Minister could advise the Governor to delegate the power to him. Basi Reddy mentioned this to the Chief Minister who readily agreed. I called on the Governor and requested him to delegate the power to Basi Reddy to administer the oath of office to me. He agreed stipulating that the swearing-in should take place at Raj Bhavan. In consultation with me the Registrar fixed the swearing-in for 27 July. The Chief Minister wrote to me to say that owing to a pre-arranged programme he would not be in the city on that day. After getting over all these hurdles I was sworn in as Chief Justice on 27 July. Besides judges and advocates only one minister – P. Thimma Reddy – was present. The function was well attended. Justice Basi Reddy administered the oath. I had earlier decided that since both Basi Reddy and Kumarayya were older than me, on the assumption that I would be the Chief Justice for the whole of the term I would go on a month's leave to give each one of them a chance to act as Chief Justice. I could only take a month's leave on full pay at a time and hence the acting chance could be given for a month.

On 28 July the *Indian Express* carried the news with my photograph and my life sketch. It began: 'Law, it is said, is a jealous mistress, and a study of the lives of men who have occupied top places in the profession either as lawyers or as judges shows there is much truth in the saying. One thing we find common to all the great men – their sole interest in life is law. These men who may sometime in their career be called upon to deal with almost any subject under the sun derive their knowledge only from books. Fortunately the new Chief Justice of Andhra Pradesh provides a refreshing departure from this. A champion athlete, a good shot, an enthusiastic organiser, an able administrator, a learned academician and a sober judge—roll all these into one and you have an idea of the versatile personality of Mr Pingle Jaganmohan Reddy.' After speaking of my family background, my studies in England, my extra-curricular activities, my legal practice, and the seniors with whom I had worked, the item concluded with the following paragraph: 'A man blessed with a rich and varied background with many honours to his credit, Jaganmohan Reddy seems to have neither need nor taste for flattery. This reporter has several times observed that whenever an advocate in the course of his arguments said: 'Your lordship is well aware of such and such a proposition of law,' Justice Jaganmohan Reddy always replied:'I

do not know but I am willing to learn.'

This sketch was a pleasant surprise to me coming as it did from an observant reporter. I had realised long back that law covered the whole gamut of human life and nobody however erudite could claim to know it through and through. My experience as a lawyer has taught me to study a case in all aspects including those that my opponent might put forward. I know it would be discouraging for a lawyer to hear the judges say 'we know' even before the lawyer had dealt with the salient features of the case. Besides having become a High Court Judge at the early age of 38,1 was always keen to guard myself against possible comment on my being deficient in the knowledge of the law. I held the view that a lawyer who studies his case thoroughly should be allowed to put forward all his points. As I referred earlier that in 1959 during a visit to Visakhapatnam when the President of the Advocates' Association made an appreciative reference to my judgment in a case concerning the Estate Land Act, I said that our judgments reflect the industry, erudition and ability of those who present their case. Hence the credit must go to them also.

After I took charge, a large number of customary receptions were given in which laudatory speeches were made to all of which I replied. The first one was given by the Chairman of the High Court's Bar Association Sri C.Krishna Reddy on 29 July 1956 to which I replied (see Andhra Weekly Reporter, 9 September 1956).

In my reply I said: 'On this occasion I remind myself of three things: humility, aloofness and ability to say "no". Humility is a trait one must develop because it helps us to achieve greater things. Once we think we know everything, there is an end to our progress. It is humility which teaches us that in law, as in everything in life, there is so much that we do not know and so much we can learn and profit by. That should be the quest, and humility makes it possible to achieve it. As someone has said, "What chastity is to a woman, aloofness is to a judge. " By aloofness I do not mean not having social contacts, due to arrogance or pride or superior exclusiveness. But it is a quality of being sociable and yet detached and aloof. One of the things that bear very deeply on the nature of man and the discipline to which one should subject himself, is a remark of Justice Brandeis of the Supreme Court of the United States, who was more than once heard to say: "Perhaps the greatest weakness of man is his inability to say, 'no'. This weakness asserts itself in myriad ways, the weakness of not saying 'no' to the temptations, sometimes far from obvious, that come in one's way. There is the temptation to do as the Joneses do, the temptation of publicity, the temptation

of working beyond one's strength, the temptation of unworthy ambition, the temptation to be a 'good fellow', the temptation to seek or accept office because your 'friends' think you ought to – temptations without end." It is because of these rigid standards that a judge has to maintain, I feel apprehensive whether I will succeed in achieving this high standard. But I can only say: "Try I will my best". '

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The President had also referred to the consideration of merit, bereft of other considerations, in the appointment of judges. I said I had no doubt in my mind that the interest of the judiciary and judiciary alone should be the paramount consideration in the selection of judges. The citizens of this State were entitled to the highest standards of administration of justice, and if considerations other than those designed to achieve this object were to hold sway, we would be denying what was due to them.

There were several functions connected with my appointment. There was a

reception given by lady advocates in the Lady Hyderi Club. Another one by the Law Secretary to the Government, member of the State Law Commission and member Copyright Board. Yet another one by Justice P. Satyanarayan Rao, Chairman of the Law Commission, who was one of the distinguished judges of the High Court of Madras and who during the days of my practice had appeared opposite my clients in an Arbitration case before D'Arcy Reilly, Chief Justice of the Mysore High Court. In his speech he referred to this fact and remarked that I had already distinguished myself as an erudite and independent judge. The blessings of a senior judge whose reputation as a judge of the Madras High Court was high was indeed my luck. I had to live up to such high standards as were being expected of me.

There was also a dinner reception in the Secunderabad Club at which Nawab Mehdi Nawaz Jung, Konda Venkat Ranga Reddy, Justice Bhimashankaram (retired), senior advocates and others were present. There was an earlier dinner given by Konda Venkat Ranga Reddy, Deputy Chief Minister and a patriarch of the erstwhile Nizam's Bar. At the dinner I said that in the past ten days I had found it difficult to recognise myself. Ordinarily, in the daily routine of one's life, one had no time to think of oneself or sit down to reckon how one's work affected others or what was being said about one. I was not vain enough to think that all these good things said about me could apply to me. But one thing I did notice, and for which I was grateful, was the great affection and regard which people had shown me. It was in a measure an indication of their goodness as they noticed only the good things in others, and so in me.

Dr M. Chenna Reddy who was then Minister of Steel in the Union Cabinet came over to visit me and offered his congratulations on my becoming the Chief Justice.

12

After Becoming Chief Justice

My immediate problem after becoming Chief Justice was the disposal of heavy arrears of cases pending in the Court. The A.P. High Court was starved of judges because the Chief Minister at that time and the then Chief Justice of India Subba Rao did not see eye to eye; hence there were vacancies. A High Court which should have had sixteen judges was being manned by about ten judges. There were about 35,000 cases pending and the filing of new cases was 12,000 per annum. According to our norms the arrears should not be more than the filing, in any particular year. In other words if 12,000 cases had been filed, we should not have more than 12,000 in arrears. But at that time we had nearly three times the filing as arrears. The situation had become so serious that there were many criminal cases pending. As criminal benches could not be formed, the accused were languishing in jails and there was no way we could give them relief.

After I took the oath of office, and as soon as the Governor returned from Kerala he raised through the government the question of the appointment of Shri Rama Raju as Deputy Registrar by Chief Justice Manohar Pershad. I was quite firm about this and had the Registrar inform the government that under Article 229 of the Constitution the Chief Justice had the power to appoint officers and servants of the High Court, hence I did not propose to interfere with my predecessor's appointments.

The next problem was of the appointment of judges. On 7 August 1966, within a week or two of my taking over I wrote to the Chief Minister informing him of the immediate need to appoint a retired *ad hoc* judge, Justice N. Somasundaram of the Madras High Court, a very experienced judge, to dispose of the arrears of

the criminal cases, which till date consisted of 940 criminal appeals and 537 criminal revisions. Though it was inconvenient for Justice Somasun-daram to come over, out of regard for me he agreed to accept the appointment if made. I therefore formally proposed his name and requested the Chief Minister to get his appointment sanctioned early, in the first instance till the summer vacation. I sent a copy of my letter to the Chief Justice of India. Nothing was done. After waiting, on 18 September I again wrote to the Chief Minister asking him to let me know what had happened to the proposals sent by my two predecessors Manohar Pershad and N. D. Krishna Rao. I informed him that when I had visited the Governor on his invitation, he had told me that the Chief Justice of India and the Home Minister had taken a decision and had also asked that the matter may be referred to me. In view of this I asked the Chief Minister to send the papers to me before he left on his tour. But no action was taken and my correspondence was being ignored. I went to Delhi on 25 September (a Friday) after the court adjourned for the day, to see the Chief Justice of India with prior appointment. I took with me a list of about twelve names of senior advocates to discuss with him. As soon as I reached the Chief Justice's residence Chief Justice Subba Rao asked me whether I had received the papers relating to the proposals of my two predecessors. When I said nothing had been communicated to me within the two months I had been Chief Justice he called his Principal Private Secretary Shri Raghavachari and asked him to bring the Andhra file. After this was brought he read out to me his opinion endorsed on the proposals rejecting the recommendation of N. D. Krishna Rao who incidentally did not approve Manohar Pershad's proposal made earlier. The rejection of the proposal was in terse and caustic language. I said this rejection was not communicated to me. I then asked him whether I could discuss a few names and on his agreeing I did so. During the discussion he showed an interest in two persons and a doubt about one I had suggested. Ultimately, after going through the names we discussed, we agreed on five names, two as permanent judges and two additional judges apart from my proposal to make Shri S. Obul Reddy permanent. As soon as I returned to Hyderabad the next day (it was a Saturday afternoon), I phoned the Chief Minister but was told he had gone to the races and would only return in the evening. I immediately sent my proposals on 26 September 1966, proposing the names of two advocates for appointment as permanent judges and others for appointment as additional judges. I also proposed that S. Obul Reddy be appointed as a permanent judge. As required in the memorandum of instructions, I sent copies of the proposals directly to the Chief Justice of India as well. Late

in the evening the Chief Minister phoned me and while acknowledging my letter asked me what had happened. I said I had seen the Chief Justice of India who told me that he had rejected the proposals of my predecessor N. D. Krishna Rao and asked me whether I had been informed. I said nothing had been communicated to me. I had therefore sent my own proposals. The Chief Minister was disappointed and gave me the impression that he was not aware of the rejection. He said “Idi Sadhyama” (Is it possible). Anyway along with my earlier proposal for an *ad hoc* judge my four new proposals were now with him to be considered. I reminded the Chief Minister about the proposals on 28 October 1966 and again on 8 January 1967 but had no response from him. On 21 January 1967 I informed the Chief Minister that Justice Somasundaram had withdrawn his consent for his being appointed as an *ad hoc* judge. On 10 February 19671 received a letter from the Chief Secretary to say my proposals had been forwarded with the recommendation of the Chief Minister. On 30 March 1967 I received an intimation that the President had approved the appointment of Justice Obul Reddy and Shri A Sambasiva Rao as permanent judges and Shri Vinayak Rao Vaidya as additional Judge. Evidently the Governor did not recommend the names proposed by me for appointment of one more permanent judge and one more additional judge. Meanwhile Chief Justice Subba Rao had resigned as he had decided to offer himself as a candidate for presidential office as against Vice President Shri Zakir Hussain.

It could be seen from the above narrative that my correspondence with the Chief Minister had not been effective nor did it seem to have impressed on him the urgency of appointing a sufficient number of judges to clear the arrears. It took nearly eight months to get two permanent judges and one additional judge. This ineffective correspondence went on till the Chief Justice of India retired.

In view of the jurisdiction to try and determine election cases under the Representation of the Peoples Act 1951 (as amended) being vested in the High Courts so that they could be disposed of early, the Government of India, implementing the decision of the Chief Justice of India decided that instead of appointing additional judges, retired judges of High Courts other than those in which they were judges should be appointed as *ad hoc* judges under Article 224 A of the Constitution. A notification to this effect was accordingly issued on 24 April 1967. The Government of Andhra Pradesh reissued the notification on 25 May 1967. If retired judges were not available, additional judges could be appointed, but election cases should not be posted before them. I informed the

Chief Minister by my letter of 27 June 1967 that retired judges of other courts were not willing for one reason or another to be appointed as *ad hoc* judges except in one case where I was able to get the consent of a judge who had retired from our High Court in 1964 and had been appointed as a Vigilance Commissioner, to be appointed as an *ad hoc* judge. I therefore suggested two appointments as additional judges from the seniormost District and Sessions Judges. These judges had a good reputation and one of them in fact was proposed by my immediate predecessor N. D. Krishna Rao. I, of course, mentioned in the letter, while proposing the two additional judges that one of them was distantly related to me as he was married to a cousin of mine. There was therefore a possibility of some comment being made in this regard but when my predecessor had already proposed his name and he was the seniormost District and Sessions Judge, I could not ignore merit and ability for that reason. These proposals therefore consisted in having two *ad hoc* judges appointed including that of Justice N. Somasundaram earlier proposed and two additional judges. Twenty election cases would thus be posted before permanent judges, whose other work the proposed *ad hoc* and additional judges would be doing. In so far as filling the vacancy of two permanent judges and two additional judges I had already suggested names, but these were not recommended by the Chief Minister. After Subba Rao's retirement, I again made these proposals, but the Chief Minister was not in favour of the person proposed for appointment as a permanent judge, as my predecessor had not recommended his name. I insisted in reiterating his name, however, and suggested that I would also propose another name along with his for appointment as a permanent judge. It would then be for the Chief Minister to recommend whom he wanted and leave it to the Chief Justice of India and the President to choose whom they approved. The Chief Justice's Conference had advised that the Chief Justice of the High Court and the Chief Minister should alternately meet and discuss the names to be proposed by the Chief Justice before actually proposing them. Hence when I met the Chief Minister, and made the above suggestion to him, he cogitated for some time and said, 'All right. You can send the name you had earlier proposed'. It was at this meeting that I told the Chief Minister, 'If you, as the Chief Minister of this state are interested in seeing that there are no arrears, I will be interested. It will bring a good name to the state. But if you are not interested, I shall equally not be interested, because I am not one of those who will go on agitating. I will do my work as a Chief Justice, perhaps the work of two judges. I have five and a half years to go. I shall draw my salary and then I shall retire, with the full

satisfaction that I have done whatever I could and also that I did two judges' work. But if you are interested, you give me the number of judges I want, and I will guarantee that within a couple of years I will bring down the pendency of cases. He said, 'Yes.' And I said, 'Let us also understand another thing. The type of people that I want as judges, I shall recommend. If you find any of them morally, socially or in any way not desirable, namely that they are drunkards, bribe-takers, womanisers, or have any propensities which make them unfit for being appointed as judges, it will be up to you to tell me and since you have sources of information which I do not have, I will accept your suggestion and will withdraw the names. I will create no problems on this account, and this will be our mutual understanding.' After we agreed to these working rules I must say I had no problem, though in one other case he did not approve a proposal but was simply postponing a decision. After he had postponed it on two occasions, on the third occasion I said I would like to know the reason. After some hesitation he conceded. Later after I was appointed as a judge of the Supreme Court, I was told, though I do not know how far it was correct, that both these colleagues had without any justification a grouse that I had not proposed their names earlier and consequently they were not in line to be appointed Chief Justice. They however did become Chief Justices.

My concept of the choice of a judge has always been that by proper selection of the persons to be appointed as judges the dignity and the reputation of the judiciary can be maintained and enhanced. Improper selection of persons under the sway of political or other irrelevant considerations devalues that dignity and reputation. The second Chief Justice of India, Patanjali Shastri observed at a Conference of Chief Justices that the whole concept of the modern functions of the judiciary would be frustrated and its independence undermined if recruitment was made purely on patronage. It is said there was a tinge of sadness in the Chief Justice's speech as though the performance of ministers in the matter of choosing judges for the High Courts had not been quite up to the mark in our present era of freedom. I had earlier referred in my reply to the address by the Chairman of the Advocates' Bar Association to three characteristics essential in a judge which must be considered at the time of appointment. Chief Justice Misra of the erstwhile Hyderabad High Court used to tell me that in selecting a judge you must choose a person who is a gentleman first, a gentleman second and a gentleman all the time. He said a lawyer who has a practice at the Bar for over ten years is expected to have the capacity to appreciate an argument from both sides but his chief attribute should be that he was upright and incorruptible. 'To a

judge with a judicial mind extra restraints to bind him to the standards of impartiality are unnecessary. To one without it they are useless.' said Kasa Subba Rao in the *Swatantra* of 22 May 1954. It was there pointed out that an amendment to the Constitution of the United States was approved which sought to fix the size of the Supreme Court permanently at its present strength of nine judges. This was to prevent any attempt as made by President Roosevelt to pack the court with judges who would do his bidding. Keeping in mind all the norms and requirements essential in a person for him to be a judge I began to recommend persons for appointment as judges. I recommended twelve judges, who were appointed, including the one in my vacancy. The court, which had ten judges when I took over had twenty-one judges within two years. The procedure I adopted was to send the proposal with the concurrence of the Chief Minister. The person whose name was proposed was not informed. This way I avoided any scope for manoeuvring. It was only after I received intimation that the President had approved the proposal, that I would inform the person concerned. If any of them for any reason did not want the appointment, I could withdraw his name. But none of them did. This procedure enabled me to make an appointment in eight to nine weeks. Neither the Bar nor the public knew that there were any vacancies. The government agreed to the creation of the posts I required and simultaneously the recommendation would be sent. It was said that 'it not only rained but poured'.

About this time the Government of India, in consultation with the Chief Justice of India, had decided that the High Courts and not the Tribunals should henceforth have the jurisdiction to entertain and decide election disputes, and that these should be decided by sitting judges within six months of their being filed. For this purpose since sitting judges will be assigned this work the Chief Justice could propose and get *ad hoc* judges appointed to help in disposing of the regular cases. I had accordingly proposed and got appointed two senior retired judges. The first one was Justice P. Satyanarayana Rao a retired judge of the Madras High Court who was the Chairman of the Andhra Pradesh Law Commission to whom I have earlier referred. The second one was Justice M. Seshachalapathi, a retired judge of Andhra Pradesh and a distinguished colleague of mine. These two judges disposed of quite a number of civil appeals and writ cases. This procedure enabled the Andhra Pradesh High Court to dispose of all the twenty election cases within the stipulated six months. Apart from these *ad hoc* judges I was able to get eleven judges appointed within the course of one and a half years. Chief Justice Wanchoo was very helpful. He said

to me, ‘You know Reddy when any proposals come from you I approve them saying it is Reddy’s funeral. I don’t do this with others’. I expressed my gratitude for his confidence in me. By the time I went to the Supreme Court, the arrears of the Court had been brought down to 13,000 or 13,500 – one thousand or one thousand five hundred more than the annual filing. After I left the arrears had gone down still further, so much so that there was no work for some of the Benches. When I talked to the Chief Minister the understanding was that when the arrears were brought down, vacancies that arose would not be filled up and the strength of judges could thus be brought down. But once posts are created, it is certain that they will always be filled up. In 1990 we had twenty-one judges, the same number as when I left. Whether there is work or not, I was happy to see that the A.P. High Court was one of the top High Courts in India with the least number of arrears. It has been complimented for this by successive Law Ministers. What I always said was that if you have a problem and are determined to solve it, you can definitely solve it. There must be a will to do it. I believe that with every problem there is a solution already born and you have to discover it.

I was able to get good colleagues of integrity, young, learned and dedicated. Our court recovered its high prestige and all of us I am proud to say worked as a team. I sat with each of my colleagues and we got on well with one another. In fact, one of the judges during my time who became a Chief Justice and retired, even to this day remembers what I said to him at the very beginning when he sat with me. I told him that just because his name had been proposed by me and he had thus become a judge he should not feel obliged and have any hesitation to dissent. But he shouldn’t dissent for the sake of dissent to show he was independent. As far as possible my colleagues and I alternated in writing judgments. All the judges appointed during my time were quick in their disposal of cases. In these two or three years we cleared almost all the arrears.

I have stated in the previous chapter that since at the time of my appointment as Chief Justice I was younger than the two colleagues after me, i.e., Basi Reddy and Kumarayya, I would go on leave for a month at a time and give each of them an opportunity to be acting Chief Justice. In 1968 Justice Basi Reddy was due to retire, so I applied for a month’s leave which would expire on the last day of Basi Reddy’s tenure so that he would retire as Acting Chief Justice. After I went on leave I did not want to stay in Andhra Pradesh as I would be approached in any matter which had to be dealt with. I therefore went to Ahmedabad along with my brother and spent almost the whole of my leave there. My family had

interests in Ahmedabad and after my father’s death in 1965 none of us had visited it. It was, therefore, convenient for us to visit it now. At Ahmedabad we were received with courtesy and consideration by Chief Justice Bhagwati, his colleagues and the Governor. On the expiry of my leave Basi Reddy retired as acting Chief Justice. The next day my colleagues and I gave him a farewell.

13

Chief Justiceship: Problems and Incidents

How the hand of destiny plays a role in our life was more than proved when soon after I became Chief Justice I found I had to hear a petition filed by the last Nizam of Hyderabad under whose *firman* (royal edict) I had been sworn in as judge of the erstwhile Adatul- Aliya-Hyderabad High Court in February 1948.

It may not be out of place to narrate the events in greater detail. Soon after my elevation as Chief Justice of the Andhra Pradesh High Court on 27 July 1966, S. N. Reddy, retired Police Commissioner of Hyderabad who was serving the Nizam as a Special Officer, came to congratulate me. While doing so he asked me if I would like to see the ‘old man’ (Nizam). He told me that earlier another judge, a colleague of mine after his elevation as Chief Justice, had called on the Nizam and after paying his obeisance to him said that it was by a stroke of the Nizam’s pen that he was appointed a judge. This judge after retirement as Chief Justice was appointed a member of the Nizam’s Trust.

My response was that it was neither necessary nor relevant for me to follow what my colleague had done earlier. I pointed out to S. N. Reddy that I was the Chief Justice of the Andhra Pradesh High Court and not of the erstwhile Hyderabad High Court. Moreover the Nizam was no longer the head of the State. I further told S.N. Reddy that I would not like to deprive myself of the opportunity of hearing any case relating to the Nizam should he be involved in any litigation. S. N. Reddy did not pursue the matter.

In February 1948 I had called on the Nizam to give *nazr* (a cash offering of one *ashrafi* or gold coin and five *hali sikka* rupees) after my appointment as judge of Hyderabad High Court. This was in accordance with the then prevailing practice of not seeing any elder, high personage or the ruler empty-handed. Since then I had no occasion to see him at all. However, at the Independence Day At Home of the State Government in 1966, when I saw him I had offered respects *(salaam)* to the Nizam from a distance. He lifted both hands in a gesture to enquire whether I was doing well. Another *salaam* was my response.

Subsequently, one morning when I took my seat in the court along with my colleague I saw the court hall full and crowded. The cause for the same became apparent soon. D. Narasaraju, the eminent advocate (the former Advocate General) appearing for the Nizam, sought a stay of the City Civil Court's order directing the Government of Andhra Pradesh to suspend payment of the privy purse of Rs. 50 lakhs to the Nizam. This order was passed in a suit filed by someone claiming to be a relation of Nizam III staking a claim to the throne of the erstwhile Hyderabad State. The State Government had immediately stopped payment of the privy purse.

During the hearing when the Advocate General B. V. Subramanyam opposed grant of stay I asked him if the Government thought the Nizam would not be able to repay the amount if he lost the case. He was, however, agreeable to the stay if the Nizam gave an undertaking to pay the amount in case he lost the case. I then asked Narasaraju if the Nizam would give such an undertaking. After consulting those instructing him he said S. N. Reddy would give such an undertaking on behalf of the Nizam. I said I want an undertaking from the Nizam himself. He said he would contact the Nizam and report back in the afternoon. In the afternoon Narasaraju presented an undertaking by the Nizam to pay back the privy purse amount in the Court if he lost the case. The undertaking was signed 'Mir Osman Ali Khan Nizam VII'.

I could not help reflecting then how time had completed a full circle. Here in this court I took seat as a judge in February 1948 under the royal edict, *firman,* issued by the Nizam and now here I was sitting as Chief Justice dealing with a petition filed by the same Nizam and receiving an undertaking from him.

Later when the Nizam died some people tried to persuade me to join his funeral procession but I did not agree, not because I did not have respect for the deceased but out of concern for the sensitivities of the office I was holding. This

stand of mine was vindicated. Soon after the Nizam's death a dispute about his property came before the bench over which I was presiding. The Nizam had towards the close of his life named his grandson Nawab Barkat Ali Khan (also known as Mukarram Jah), son of Azam Jah, the eldest son of the Nizam, as his heir. This was opposed by the Nizam's sons, daughters and other heirs including Azam Jah. The Government was also a party to the case as recognition of the Nizam's heir was the function of the President of India. During the hearing it was argued that under the Muslim Law the heirs specified could not be skipped over. The response to this argument on behalf of Barkat Ali Khan was that Muslim Law did not apply to the Nizams. This was a desperate argument. After hearing both sides I held that recognition of the Nizam was a political matter to be decided by the Government of India irrespective of the law governing the parties, but so far as succession to his movable and immovable properties was concerned it had to be governed by Muslim Law. Barkat Ali Khan appealed to the Supreme Court but the case was compromised in accordance with my judgment.

These instances highlight how careful judges of the High Court and Supreme Court have to be in their conduct and behaviour regardless of the personalities involved in the litigation or regardless of our erstwhile status vis-a-vis these personalities.

One morning, soon after my appointment as Chief Justice I was surprised to read in the newspaper that the validity of a judgment by Gopal Rao Ekbote, who was appointed judge of the High Court early in 1962, was questioned before the Supreme Court in an appeal on two counts. Firstly, that he was not qualified for appointment as High Court judge as he did not have ten years' practice after passing LL.B. and, secondly, that he had not given his correct date of birth. As soon as I saw this news item I rang up Ekbote to enquire about the adverse publicity he had received. I told him I was equally worried about the reputation of our High Court. He said he would come and explain the whole matter to me in person. He came to me that evening. After going into the matter I came to the conclusion that the argument that Ekbote was not qualified to be a High Court judge was untenable if not malicious. So far as the question of age was concerned it was for the President of India and the Supreme Court to settle the matter. Ekbote did not have any university degree when he was first enrolled pleader in Aurangabad in 1930 at the age of twenty. Third grade pleaders had to renew their enrolment every year in which they had to give their date of birth. A

first grade pleader did not have to renew his enrolment each year. There was also an Advocates Act under which senior advocates were entitled to be enrolled. Ekbote after enrolling himself each year as a pleader enrolled as a first grade pleader and later as an Advocate under the Hyderabad Advocates Act in November 1948. After the coming into force of the Constitution he was enrolled Senior Advocate of the Supreme Court in September 1951. Ekbote had meanwhile secured his M.A. and LL.B. degrees by attending the evening college of Osmania University. He had therefore been an advocate for over ten years which is what is laid down in the Constitution as a minimum qualification to be appointed a Judge of the High Court.

In view of the importance of the matter I rang up the Chief Minister to suggest that as the State was involved, the Solicitor General S. V. Gupte should be instructed to appear for the State and take up Ekbote's case. He agreed and consequently I rang up Gupte to inform him that he would receive instructions from the A.P. Government to appear for Ekbote. Ekbote and I sat till very late in the evening and prepared a detailed note to enable Gupte to file a counter on Ekbote's behalf. After hearing Gupte the Supreme Court dismissed the appeal, holding that there was no basis to say that Ekbote was not qualified to be appointed High Court judge and that the questions of age was for the President to decide.

Since the Supreme Court did not give any directions for placing the matter of age for determination by the President, no action was taken in this regard. Some tried to find fault with me in this regard. I felt this was ridiculous. It would have been improper to *suo motu* initiate any proceedings in this regard in the absence of any directions from the highest court or for the President to call for the papers relating to Ekbote's enrolment to determine his age. Of course in another case, on complaints by the advocates immediately after the Police Action, a judge of the erstwhile Hyderabad High Court was made to resign. When he had enrolled as an advocate he had given one birth date, when he was appointed Public Prosecutor a different one, and yet another when he was appointed as a judge: each time he grew younger in age. When the judge was confronted with these records he resigned. There was another case in the Calcutta High Court where Justice Mittel also had to resign because he had given a false age. After this the President was empowered in cases where the age of a judge was questioned to determine the dispute and fix his age. In Ekbote's case he was not called on to determine it.

One of the tasks I had to discharge as Chief Justice was to name judges to hear the election petitions challenging the election of those elected to Parliament or Legislative Assembly of the State. The election of Dr M. Chenna Reddy to Parliament was challenged and the High Court set aside his election. Chenna Reddy was not only unseated but was also debarred for six years from contesting elections to both Parliament and the State legislature. Though I knew he was very upset with the High Court judgment, I did not think he had a grouse against me. The High Court judgment was also confirmed by the Supreme Court. I thought the matter had ended there but it was only after I took over as Vice Chancellor of Osmania University after superannuation as judge of the Supreme Court, that I learnt that Chenna Redddy had a grievance against me for nominating the judge who unseated him. How I was concerned with the decision of the judge in unseating him could only be a figment of the imagination without any basis whatsoever. I suppose everyone who loses his case is ready to believe any canard against the judge concerned or even against the Chief Justice who nominated him. In any case whatever grievance or grouse Chenna Reddy had about being unseated, there was no basis whatsoever for any grievance against me.

I had known Chenna Reddy ever since I returned to Hyderabad and set up my law practice in 1941. Chenna Reddy was the nephew of Konda Venkat Ranga Reddy, who was an advocate. Chenna Reddy was then a medical practitioner. K. V. Ranga Reddy, a venerable gentleman, was our family lawyer. When at the instance of Raja Bahadur Venkatarama Reddy, I took over as Secretary of Reddy Hostel, K. V. Ranga Reddy, Chenna Reddy and Ravi Narayana Reddy (who later became a communist leader) were on the hostel's managing committee. Both Ranga Reddy and Chenna Reddy consulted me on some points of law and sought my advice and services. My relations with Chenna Reddy remained quite cordial even after Chenna Reddy entered politics and held different positions. As I pointed out earlier, when I was appointed Chief Justice, Chenna Reddy, then a central minister, came over to Hyderabad to congratulate me and spent some time with me. He had been elected from Tandur onstituency where my family had interests and they also helped him in his election. As election petitions were being filed in the High Courts by an amendment to the Representation of the People Act in 1967 to ensure quick disposal of election petitions, I had to arrange for their disposal. Twenty election petitions were filed and I assigned them to Justices Basi Reddy, N. Kumarayya and Ananthanarayana Ayyar, in order of seniority. As these cases had to be disposed of by sitting judges and as

far as possible within six months from the date of their posting, I had to ensure that this was achieved. As the trial of the cases went on I found that the cases before Ananthanarayana Ayyar were moving very slowly and at that speed he could not complete the five cases allotted to him within six months. Chenna Reddy's case was one such but for quite some time it had not been touched. So after consulting my colleagues including Ananthanarayana Ayyar I decided to allot the case to another judge who was next in order of seniority. Justice K. V. L. Narasimham had already been allotted company law cases and as such he was not available. The next four judges were from Telangana. Justice Mohammed Mirza was ill and on leave while Justice Sherfuddin (as Sessions Judge heading the election tribunal) had already dealt with the election petition against Brahmananda Reddy which he had taken nearly six years to dispose of. In fact the verdict in that case came after the next general elections. Justice Gopal Rao Ekbote was previously a Congress minister and he and Chenna Reddy were close to each other when the former was in politics. I therefore assigned the election petition against Chenna Reddy filed by Vandemateram Ramachandra Rao to the next senior judge, Justice Krishna Rao, who was very quick in disposals. Neither party objected to his appointment and the trial progressed quickly. In fact one day Justice Basi Reddy told me that he had met Chenna Reddy somewhere and enquired about the election case and Chenna Reddy told him that it was going on well and that the 'judge was considerate'. On the last working day of April 1968, the Registrar informed me during the lunch hour that the verdict in the election case had gone against Chenna Reddy on the grounds that he had appealed to religious feelings — an election offence. A few days later I saw Chenna Reddy at a wedding. When I sat next to,him I tried to talk to him but I had only a monosyllabic response. When I was leaving K.V. Ranga Reddy's son Madhav Reddy (who later became a judge and subsequently Chief Justice) came to see me off. I asked him: 'What is the matter with Chenna Reddy? He seems very unresponsive. He said: ' Don't you know the vacation judge has dismissed his stay petition while granting leave to appeal to Supreme Court?' When I said: 'That has nothing to do with me'. Madhav Reddy said: 'He does not speak to me either, because he thinks that my father acts on my advice.' I thought that he was upset as the judgment went against him. It was but natural. I was myself surprised at the judgment going against him. After he had appealed to the Supreme Court, when the Bench consisting of Hidayatullah CJ. and Mitter J. were hearing the appeal, the report of the remarks they were making made me think that the appeal would be allowed. I mentioned this to Ramachandra Rao J.

my colleague who had appeared for him but was surprised when during lunch interval Subba Rao, my secretary told me that AIR it had been announced over All-India Radio that the Bench had dismissed the appeal. The judgment would be delivered later.

I came to know later that Chenna Reddy had a grouse against me for changing the judge and nominating Justice Krishna Rao which it was alleged I had done at the instance of the Chief Minister. If such was the grievance I do not know how anyone as intelligent as Chenna Reddy, with our close association and mutual regard for one another, could have believed such a canard, particularly when the Chief Minister had given me so much trouble and even wanted to get me transferred. Would he have dared to make such a request and risk exposing himself to contempt proceedings? Anyway I do not wish to expatiate on this aspect except to let the readers judge whether my record as a judge and Chief Justice can justify any such grouse or whether I have acted in any manner inconsistent with the highest norms of justice. I felt sorry that Chenna Reddy should be so aggrieved with me without any justification. It only proved that any one who loses his case in a court of law always has a grouse against the judge or the Chief Justice for any part he may have had to perform in furtherance of his duty. I have avoided narrating all the details of the subsequent incidents relating to this grouse and am only referring to it to show that these are part of the professional hazards which we must get used to and suffer in silence. On my part I have no ill feelings against Chenna Reddy and continue to have the regard for him which I always had.

14

To the Supreme Court

In May 1969 my wife and I decided to see our second son Jairam and daughter-in-law Surekha in London and my eldest son Ajith in Chicago, United States. It was my first visit to the United States. Actually my visit was to get a check-up of my spine done and if necessary undergo an operation. I had also a stone in my kidney and if advised I would have to have it removed. I went before a medical board to certify that these operations in those days could not be done with safety in India and could be done in the United Kingdom or the USA. The Medical Board certified this and the government granted the necessary foreign exchange for my medical and travel expenses. I applied on 12 May 1969 for leave from 7 Junel969 to 11 July 1969 both days inclusive, and in my absence I recommended the appointment of the seniormost judge Justice N. Kumarayya to perform the duties of the Chief Justice under Article 223. The very next day, on 13 May 1969, I had, in agreement with the proposal of the Home Ministry, Government of India dated 6 April 1969 for appointment of an additional judge in each state for dealing with the problem of corruption in the judiciary and for proper disposal of cases in the Courts of magistrates and civil judges, proposed the name of Shri Manthena Ramachandra Raju, District and Sessions Judge and Registrar of the High Court, as additional judge of the High Court. I stated his qualifications and described his satisfactory work, as a District and Sessions judge, as Chairman of the Disciplinary Tribunal and as the Registrar of the High Court. Earlier when the four district judges were appointed to Grade-I rank, Ramachandra Raju was the third. However, in my recommendation I said he had worked closely with me, and I proposed him out of four grade-I District Judges who when appointed as such were not given *inter se* seniority. This was left to

the decision of the Chief Justice. For the kind of work for which the government had wanted the appointment of an additional judge, Shri Raju was the most competent and suitable. I however, sent the confidential files of all the judges. After sending this proposal I left Hyderabad for Delhi on my visit abroad. My son had arranged for a medical check-up. After a thorough check-up the leading doctors felt that no operation was necessary. In fact, Sir Herbert Seddon, the famous orthopedic surgeon said he had the same problem and advised me to live with it as he was doing. The kidney specialist also said the same. After spending a week or ten days in the U.K. we visited Chicago on 18 May and met our son Ajith who had made arrangements for us to stay in a hotel. As he was working we could only see him after 6 p.m. and at the week end. In America working people were very busy, as they would start early and would be at work by 8 a.m. even without breakfast. After 10 or 11.00 a.m. we would take a bus to the downtown area of the city. In the bus we met mostly old aged men and women who after their work at home spent their time going out shopping or came out for a spree. Likewise we too went round window shopping. We would have our lunch in one of the restaurants and return to the hotel and await the visit of Ajith in the evening. He would take us round showing us places of interest. He gave a small dinner for us. He introduced us to some of his friends. On the 22 May Ajith gave me a packet of letters addressed to me care of his address. In that packet, there was a letter from my personal secretary, Subba Rao. When I opened Subba Rao's letter I found a letter marked 'Confidential' from Chief Justice Hidayatullah. It was dated 14 May 1969 and addressed to me at Hyderabad. On reading it I was surprised to find that Chief Justice Hidayatullah was inviting me to join the Supreme Court of India as a judge. It read as follows:

Secret

Chief Justice of India
Camp: B-9 Mafatlal Park, Bombay

May 14, 1969.

My dear Reddy,

Two vacancies are going to take place n the Supreme Court in August and October respectively. I propose to write to the Government of India to make two appointments in August itself. The vacancy in October need not then be filled. I intend suggesting your name to the Government for one of the vacancies. But before I do so I would like to know if you are willing to join the Supreme Court

in August of this year. The reply to this letter may be sent to me to reach by the 30th May 1969 to my Delhi Address. I shall be returning from Bombay on the 29th May.

With kind regards,

Yours sincerely,

(M. HIDAYATULLAH)

I showed it to my wife and told her that since her mother had been living with us and helped us in looking after our children ever since Goutam's birth in November 1947 and was now bed-ridden, I did not think it fair to accept the offer as we would be deserting her. My wife immediately said that she would take care of that problem. Her brother and sister-in- law and also their daughter and children were living in Hyderabad and during our absence she would be with them and would be looked after. If I wanted to refuse the offer it should not be on the grounds that we would not be there to look after her mother. Then I showed it to my son Ajith and asked him 'What do you say?' Ajith said 'Is that what you want, Daddy?' I said 'It is not what I want. It is what the Chief Justice of India wants.' After that he did not say anything and since my wife was not averse to my accepting the offer, we all went to the Post Office which is called Mail Office in America and there I wrote a registered A/D letter dated 22 May 1969 as follows:

C/o. Ajith Kumar Pingle
My dear Chief Justice,

I am thankful to you for your letter of 14th May 1969 which has been redirected to my son's address. It is very kind of you to think of me for one of the vacancy in the Supreme Court and feel it an honour. I am willing to join in August if appointed and sincerely hope that I will prove worthy of your choice.

Yours sincerely,
(P. J. REDDY)

Since his letter was marked secret I was expected to keep the offer 'Confidential' until the Government and President approved it. Except to my wife and son I did not disclose the offer to anybody.

Since Nawab Ali Yawar Jung our Ambassador of India to United States invited us to stay with him at Washington I wrote to him accepting his invitation with

thanks. Similarly, T. Navaneeth Rao, Lecturer in Chemistry, Osmania University who was doing his post-doctoral research in Columbus, Ohio also invited us for a visit to him. We decided to spend a week with him. After spending a week with Ajith we planned to visit Navaneeth Rao. As it happened, on 18 May, the day we landed in Chicago, Navaneeth Rao's second son Vinay was born.

Navaneeth Rao received us at Columbus on Friday 24 May. He had taken a week's leave from the University to be with us and take us to Atlanta, Niagara Falls and other places of interest.

At Ohio, we met Professor Calvert, President, Department of Chemistry and Professor Lippencott, Vice Chairman, both of whom had visited me when thev visited Osmania University. We also met Professor Narahari Rao, National Professor in Physics. Professor Lippencott was good enough to invite my wife and me to their house for high tea, which I was told an American family very rarely does as it involves a great deal of hard work for the housewife to entertain at home. They had invited about fifty people, two from each profession, both from the University and outside. They also took us out for an official dinner at which there was a good gathering. We enjoyed the seven days visit immensely and were thankful to Navaneeth Rao and his wife for having us with them. We particularly enjoyed our visit to the Niagara Falls and going over to the Canadian side. We also had our fiirst ride in a helicopter going over the falls.

From there we went to Washington. In Washington Nawab Ali Yawar Jung had us met and taken to his residence. His wife Zehra is the sister of my school friend, Hadi Bilgrami. Both Ali and Zehra were very kind and hospitable. They arranged for us a visit to the home town and residence of George Washington in the State of Virginia and of Thomas Jefferson at Monticello. We visited the Lincoln and Jefferson Memorials at Washington as well as the Smithsonian Museum where there were many scientific exhibits, old and modern, including a submarine. It was indeed a great education for us. We spent more than half a day there but even that not sufficient to see each and every exhibit. We visited the White House and the places where the Presidents lived and worked.

Washington is a very clean dty and reminded us of the Delhi of those days: straight roads, boulevards, parks, all neat and clean. Nawab Ali Yawar Jungf's driver who used to take us round to various places was a Greek. He was proud of his ethnic origin and used to brag about the achievements of Greeks, even to the extent of saying that the late President Kennedy's wife Jacqueline after the

assassination of the President married a Greek, the shipping tycoon Aristotle Onassis. After we arrived to stay with Ali and Zehra, Ali told me that he had arranged for me a visit to the Chief Justice of the United States, Earl Warren. There was news that Earl Warren had tendered his resignation and a new Chief Justice was to be nominated. One afternoon at about four o'clock, a Deputy Secretary to the embassy took me to see the Chief Justice. He was tall, robust and very polite. He received me in his chambers with law reports and books arranged all around him. He spid that when he met the Ambassador at a party he had informed him of my visit and asked him whether he could spare time to see me. The Chief Justice had said he would welcome it. During the course of the conversation I said that the American legal academics take so many factors of an incumbent justice, his station in life, his being wealthy, his political views on various topics etc., as contributing to the manner in which judicial decisions are made. I confessed, in so far as I was concerned, none of these factors at any rate appeared to influence me. When a case is argued and I have to arrive at a decision I always found it difficult to arrive at a decision. The arguments of the lawyers on both sides used to create a struggle within me. This process continued till I was able to come to a conclusion, after which I would examine all the arguments of both sides once again, to be satisfied that I had considered them. In this process not once was I conscious of the various factors contributing as it were to the ethos of a judge as influencing that decision. Earl Warren agreed with me that it was so. He said: 'Chief Justice, when I was the Governor of California I had to take some decisions as a Governor, but after I became the Chief Justice my decisions on such matters were contrary to what I had taken as a Governor.' This gave rise to the remark that Warren could not have been right on both occasions. I said 'Chief Justice, you were right on the last occasion.' He gave a hearty laugh. The day I met him I was told he had delivered several important decisions. I was greatly impressed by him. From the relaxed way in which we spent about half an hour and the conversation which we had together, I was happy that Ali had thought it fit to make an appointment for me to see the great man.

Another thing that impressed me was the forthrightness of Ali's youngest son, a bright young man. When at dinner the conversation turned on how dirty the streets were in our country with cattle moving about without any control, and various other unhygienic matters were being referred to the young man answered, 'That is our country and if we do not want to live in it because of such conditions we should leave it.' This silenced the conversation on the subject.

From Washington we went to New York where Mr P. Ranga Reddy, the press representative of the Indian Express to the United Nations met us and took us to his flat. He showed us round the United Nations buildings and various other important sights. The traffic on the roads was very heavy and the whole city was crowded and cramped. There were even bridges from one skyscraper to another from which we could see the traffic passing below. It was a very thrilling sight. We visited the New York Paleontological Museum of which Professor Colbert was the Director. He showed us round. We were able to see a full fossil assembly of a dinosaur. Because of its huge dimensions nature had provided some relays to convey the feeling of touch at any part of the body. We also visited Professor Colbert and his wife in their house as well as my niece Indu, her husband who was a doctor, and their young son.

After having a nice time in New York we returned to London. After spending a week or so with our son and daughter-in-law we visited Norway at the invitation of our Ambassador, N. V. Rao and his wife. Rao had been my contemporary in London. He studied at the London School of Economics and was a member of Gray's Inn. He and his wife Renuka were very hospitable. We visited Norwegian factories, old age homes and various other places of interest. We were greatly impressed by the old age homes where the old were cared for very well. We next went to Sweden by car. Though the cost of living in Sweden was higher the people were a little more sophisticated than the Norwegians. In these two Nordic states we found even Ministers going to their offices or on business on cycles. In one case Rao pointed to a person walking with a bag and said he was a Minister of the Government walking to his office through a crowded street like any person walking in the street. After we completed our visit we flew to Delhi via Moscow.

At Moscow where we had to disembark, to get onto an Air India plane to fly to Delhi, we found a different atmosphere. As soon as our plane landed, the security cars, one in front and the other at the back of the plane conducted us to the airport. After we disembarked at the airport gate the airport officer took our passports away and kept them with him. We were not allowed to leave the airport. Even the luggage which had to be transshipped to the Air India plane was brought out to the customs. The officer in-charge removed all the articles in our suitcases and after checking them thoroughly repacked them neatly before passing them on to the Air India Luggage Section. As we had no roubles to buy ourselves even some coffee or eatables we spent our time going round the

various places in the airport that we were allowed to visit. We thought Delhi Airport was much better. Before we boarded the Air India flight in the evening, we were given our passports. Most of the time during the flight, which was during the night, we slept. In the morning we saw that we were flying over the Karakorum range – it was a lovely sight if somewhat frightening. We landed in Delhi at 7.00 am of 5 July 1969. In Delhi we were met by Mr Malla Reddy, Jairam's father-in-law. We stayed with Mr and Mrs Malla Reddy. I met the Chief Justice of India, Justice Hidayatullah who informed me that his proposal for my appointment had been approved by the Prime Minister and sent to the President. He said that along with me two more judges were proposed to be appointed, one a puisne judge of the Calcutta High Court and the other Dua who was the Chief Justice of Delhi. The Chief Justice showed great friendliness and said that he and his colleagues were happy that I had agreed to join the Court. I was touched by the manner in which he welcomed me. The orders he said would be issued as early as possible. I asked him when I would be required to join the Court. He said on 1 August. I did not ask him the order in which our seniority would be fixed. That matter never entered my mind because I was the seniormost Chief Justice in India, and also the seniormost judge.

I left Delhi for Hyderabad on the same day, arriving on a Saturday evening. I was met at the airport by the Chief Justice in-charge, my other colleagues, the Registrar Shri Ramachandra Raju and others. I asked Shri Raju whether any announcement had been made about his appointment. He said it had, only that morning. Later he told me that during my absence Kumarayya had sent for him to find out his date of birth and other details required for his appointment which he gave. I was glad that, though Kumarayya was close to the two District and Sessions Judges as referred to above, he did not disclose my proposal. The day after I landed the floodgates opened against the appointment of Shri Raju. There were many telephone calls which Subba Rao received which were considered to be abusive and resentful of the appointment in supersession of the two judges above Ramachandra Raju before their appointment to Grade I posts.

One of their supporters even sent a telegram to the President to withdraw Raju's warrant of appointment which indeed was a ridiculous request. Those against the appointment also tried to play up Telangana versus Andhra feelings apd accused me of anti-Telangana feelings and actions, which of course was nonsense. Those who were accusing me were all non-Telanganas, who just a generation ago had come over from the North and were trying to out-Herod the Herod. Actually as

Administrative Judge before the formation of the Andhra Pradesh High Court I had suggested the appointment of one of them and agreed to a suggestion for the appointment of the second, both as District and Sessions Judges in the erstwhile Hyderabad State. My concern was always to consider the best interest of the institution I served, irrespective of parochial or other considerations which were not likely to subserve my aim.

Be that it may, the next day Monday 7 July, when I resumed charge, after swearing in Shri Raju as an Additional judge, I sent for Justice Obul Reddy at lunch time to seek his advice as he was an erstwhile Registrar and had administrative experience. When he met me I said I wanted to appoint Shri Umapathi Rao, a retired District and Sessions Judge who was of unimpeachable character, able and a blue-blooded Telangana as Registrar. Justice Obul Reddy said we would have to get the government's consent. I said there was no such condition. All administrative appointments in the High Court could be made by the Chief Justice on whom Article 229 of the Constitution conferred the power so to appoint. Under the proviso to Article 229, the Governor could by rules prescribe in certain specified cases, that no person not attached to the court should be appointed to any office connected with the court save after consultation with the State Public Service Commission. Since no such rules had been made by the Governor, I told Justice Obul Reddy I could appoint Umapathi Rao. As a matter of courtesy I proposed to inform the Chief Minister that I had appointed Umapathi Rao as Registrar. Justice Obul Reddy agreed. I asked Subba Rao to ask Umapathi Rao to see me that evening, and when he did I informed him of my proposal to appoint him as Registrar. He asked me whether he was fit to be so appointed. I told him to leave that to me. On his indicating his consent that it would be convenient for him to take charge the day after, I appointed him Registrar and had the notification of his appointment issued. This came as a surprise to everyone because the allegations of my being against Telangana personnel were found to be baseless and only self-interested. Some of the close relatives of the so called superseded judges remarked that I was a clever fellow to have made this move to shut them up. In fact after the establishment of Andhra Pradesh, Umapathi Rao was the first Telangana person to be appointed as Registrar, which was a pivotal appointment. Even the colleague next to me in seniority, Justice Kumarayya was very happy with this appointment as he knew Umapathi Rao and his family. Even the Chief Minister was happy as J.V.Narsing Rao, one of his Ministers, knew Umapathi Rao well.

My absence of about six weeks had created problems. Interested parties I felt had tried to create some hostility towards me. I got one or two anonymous letters. Andhra had always been known for anonymous letters, but during my tenure except for one or two in which false allegations were made against me there were very few. One of these letters referred to the appointment of Seetharam Reddy, later a High Court judge, as Chief Editor of the Indian Law Reports, Andhra Pradesh series, an official publication — characterising me as a Reddy fanatic. There was a committee which was in charge of the publication of which I was the Chairman. At a meeting where the registrar and two advocates were present I suggested the appointment of the editor of the *Andhra Weekly Reporter* but the advocates opposed me and suggested Seetharam Reddy's name. Since Seetharam Reddy was already a reporter, I agreed and he was appointed. Once this appointment was known rumours spread that it was at my instance that he was appointed as he was a Reddy. There was one letter which after complaining about me for ignoring capable advocates said that I should be appointed as a judge of the Supreme Court. All this conveyed a subtle suggestion that if I left the place, the successor who would otherwise not have a chance of becoming a Chief Justice would be a more suitable person. What surprised me was that the Advocates' Association had put these letters on the notice board, instead of throwing them in the waste paper basket.

As I was asked to keep my proposed appointment from being made public until the President's notification appointing me was issued, I had considerable difficulty in behaving as if I was going to carry on as Chief Justice and at the same time make arrangements for my taking over on the 1 August as Judge of the Supreme Court of India. Of course my loyal and dedicated personal secretary Shri Subba Rao had to be in the know but since all matters dealt with by me which had to pass through him were strictly confidential, I had no anxiety on this account. On 15 July I received a letter from the Chief Secretary Shri M.T. Raju that he had received a communication from the Government of India to say that the President had approved my appointment and so they wanted me to send them a medical certificate of fitness of health from a civil surgeon or the director of medical services. He also said I was expected to join on 1 August or as soon thereafter as was convenient. When Justice Obul Reddy and Mrs Shakuntala Obul Reddy who is a civil surgeon came to call on me the next day on 16 July, I disclosed my impending appointment and while asking them to keep this matter confidential requested Dr Shakuntala Obul Reddy to give me a certificate. She was good enough to give one which I sent on the same day to Shri M.T. Raju,

Chief Secretary, for onward transmission. I also called on the Chief Minister Shri Brahmananda Reddy to formally inform him about it. He said he had beenn consulted before my name was sent up to the President.

I then sent a proposal to appoint Shri Sriramulu, the Chairman of the Income Tax Tribunal, who was a District and Sessions Judge appointed in the erstwhile Hyderabad Judicial Service and continued as such in the Andhra Pradesh Civil Service until he was selected and appointed as the Judicial member of the Income Tax Tribunal.

In the Chief Justices' Conference it had been decided that if the Chief Justice of any High Court of a state considered one of the judicial members of the Income Tax Tribunal appointed to the State Judicial Service who would be senior to other members of the service then serving, fit to be appointed a judge of the High Court he could propose him for appointment. Since Sriramulu had a good record as a District and Sessions Judge and also as a member of the Income Tax Tribunal, and would be the seniormost if he had continued as a District and Sessions Judge, I proposed his name to be appointed a permanent judge in my vacancy. Along with with this proposal I also recommended that Justice A. D. V. Reddy and Justice Venkateshwar Rao, additional judges be made permanent. After this, on 25 July a notification of the appointment of A. N. Ray, myself and Dua to the Supreme Court was published. I was surprised and disappointed that I was made junior to A. N. Ray of the Calcutta High Court although considered from any angle he was junior to me. I had been a permanent judge from 1952 while Ray was appointed an additional judge of the Calcutta High Court in 1957 and made permanent only in 1959. He was junior to me as a Barrister and also I was the seniormost Chief Justice of a High Court at the time. Besides Ray was younger to me in age. Under the confidential rules the Chief Justice of High Courts were informed that when two or more names for appointment as Judges are sent up at the same time the older in age should be given seniority. There was a call from a Senior Advocate Ram Reddy pointing out to this injustice to me and requesting me to refuse the appointment. I told him since I had not made this a condition of my appointment – though I was not aware that Ray a junior would be given seniority over me which I only came to know at the last moment I could not very well withdraw my offer having given my consent without stipulating any condition for my appointment. Moreover, I was going to the Supreme Court which is the Highest Court, to contribute to the law of the country and if I could do that I would be satisfied. Besides, as a Chief Justice I had the satisfaction of

being instrumental in adding twelve judges to the High Court within about three years, without any difficulty. Each appointment order was announced within eight weeks from the time I made the proposal, which was a record not only at the time but holds good even to this day and has not been broken.

My wife was staying behind in Hyderabad, as my daughter Urmila, who had passed her M.B.B.S. at the age of 22 and had done a year's housemanship, was given admission to the Institute of Genetics in London for a M.Phil course through the good offices of Helen Haldane. Urmila was going sometime in the third week of August. So after sending off our car and luggage my wife and Urmila would join me in Delhi from where Urmila would fly to London. As her two brothers Jairam and Gautam were studying there she would be looked after by them. Just before I left there was a dispute between the President of the Advocates' Association Shri C. Krishna Reddy and the Advocate General B.V. Subrahmanyam, over a hall which though used as a Court Hall was attached to the Advocates' Association Hall. The Advocate General wanted to have it but since it was next to the Advocates' Association, the President said it was more convenient for them to have it for housing their library. Since the Advocate General had already an office and accommodation, I thought the claim of the President was more deserving so I decided to have it placed at the disposal of the Advocates' Association. The Advocate General took umbrage. He thought I favoured Shri C. Krishna Reddy. He may have had other reasons but this was chosen as one, so much so that when I was leaving the court to go to Delhi the fare well from the Bar which was generally given by the Advocate General as the Leader of the Bar was not given. Shri Subrahmanyam pleaded indisposition and wrote a letter to that effect. In his place P. Ramachandra Reddy, the Principal Government pleader gave the farewell address when the full court of twenty-one judges including myself assembled after lunch. I was however told that the Advocate General had come to court and was sitting in my personal secretary's office, very near my chambers. In my reply to the Advocate General's letter I regretted that he was not well and hoped he would soon recover from his illness. I also referred to this aspect in my reply to the full court farewell given by the Principal Government Pleader. The Advocates' Association, the Bar Association and the shorthand writers also gave me a fitting farewell. Before I left I had proposed that their posts should be upgraded to be equivalent to those in the Secretariat and even spoke to the Chief Minister about it. After I left I was glad to be informed that they were given the first grade scales.

Just before I left the court after the farewell I informed the two additional judges of my recommendation to make them permanent. They were greatly relieved as they had doubts about this after I left. I thought they were unnecessarily anxious. I didn't think they need have had any anxiety as it was difficult for Kumarayya my successor to overlook them. My colleagues gave a farewell dinner in the Jubilee Hall on 30 July at which the Chief Minister and the members of the government, the law officers and others were present. In my response to Justice Kumarayya's farewell, I referred to the wonderful way all of us collaborated to enhance the reputation of the Andhra Pradesh High Court. I also spoke about the relationship between the Chief Minister and myself. I said since both of us came from different areas our association was merely formal, meeting each other only in official functions such as Independence and Republic Day. Our relationship throughout was distant but after I became Chief Justice when we began meeting officially I found the Chief Minister to be sympathetic and helpful. Except in a couple of cases he never hesitated to agree with my proposals for appointment of judges and in other matters. I appreciated his cooperation which helped us to bring down the arrears very quickly. In sum the relations between us were happy for which I expressed my thanks. I took leave of all my colleagues who saw me off on 31 July, a Sunday evening. On reaching Delhi at about 7 p.m. I was met by the Registrar of the Supreme Court, Shri Rane and was taken to the Andhra Pradesh Guest House. After I reached the Guest House, I was hoping to have dinner with Mr and Mrs Malla Reddy but I was surprised to see a big bundle of papers to be gone through for the next day's special leave admissions. A secretary attached to me was also present. Since going through these papers wouldl take me well into the night and perhaps past midnight, I cancelled the dinner and started reading the papers, which I completed at about 3 a.m. The next morning I was sworn in before the full court along with my other two colleagues by the Acting Chief Justice J. C. Shah in the absence of Chief Justice Hidayatullah who was acting as President of India. After the death of the President Zakir Hussain, the Vice President, Mr V. V. Giri had decided to resign as acting President to enable him to stand for election as President in a contest against Sanjeeva Reddy.

15

Communal Riots: Chairman, Commissions of Enquiry

On 1 August, Justice A. N. Ray, being senior, sat with J. C. Shah while I sat with the next senior Sikri. I had read all the papers throughout the night so it was possible to admit those cases requiring consideration and reject those which deserved to the dismissed. Initially, till such time as I became conversant with the atmosphere of the Court, I only expressed my views through Sikri who being senior was the Presiding Judge. I soon got the hang of the atmosphere and began to settle down. The first day I began to be troubled by a stye in my eye. Perhaps it came up as a result of the all-night reading of cases for admission. Within the next few days it started giving me a lot of trouble. My friend Amarnath Grover suggested that I consult Professor Dr Madan Mohan of the Rajendra Prasad Centre for Ophthalmology. On my agreeing to his suggestion Amarnath fixed an appointment for me for a Saturday. Dr Madan Mohan very neatly removed the stye without my feeling the slightest pain. In fact I was not even aware he had done the job till he told me it was over. He then put a small bandage on my lid and asked me to wear my glasses with it on for a few days. There was nothing to be done thereafter. I thanked him and left and attended court on Monday without any discomfort. We became good friends and even after my retirement we used to meet each other whenever I was in Delhi or when he visited Hyderabad. He was a renowned eye specialist of India.

While I had got over my eye problem, there were a few other problems with which I was confronted. The first was accommodation. I was staying in the

Andhra Pradesh Guest House not far from the Supreme Court. I was given one of the VIP suites but I chose to have my accommodation upstairs as I did not want to be continually disturbed by politicians and other visitors calling on the Chief Minister and the other ministers who stayed there whenever they visited Delhi, which was quite often. I did not know when I would be allotted a residence. When I was in England on my way back to India we had got the news that our President Zakir Hussain had collapsed in the morning in the bathroom and died. Vice President V. V. Giri took over as acting President. I believe Sanjeeva Reddy, President of the Congress party, was in Norway at the time and according to my friend N. V. Rao, our Ambassador in Norway he immediately left for India as there would be a Presidential election and gave an indication of his intention of offering himself as a candidate. When I returned to India V. V. Giri was acting President. After he had signed our warrants of appointment he resigned in order to offer himself as a Presidential candidate and Hidayatullah, Chief Justice of India, took over as acting President. The Congress party met in Bangalore to choose its candidate. At the meeting of the AICC (All India Congress Committee) Mrs Indira Gandhi, the Prime Minister, had first proposed Sanjeeva Reddy as the Congress party candidate. However, the AICC had adopted the economic policy resolution in accord with Mrs Gandhi's views on the subject. It was moved by Mr Morarji Desai and seconded by Mr Chavan, the Home Minister. A few hours after this resolution was adopted, Mrs Gandhi withdrew her support to Sanjeeva Reddy and backed V. V. Giri instead. On Sanjeeva Reddy's being nominated at the Conference she issued the Bank Nationalisation Ordinance nationalising fourteen banks. As a result of the ordinance, Morarji Desai resigned. V. V. Giri also resigned as acting President and in his place Chief Justice Hidayatullah took over as the Acting President: The Congress party which had nominated Sanjeeva Reddy gave notice to Mrs Gandhi and expelled her. As a result there was a split and Indira Gandhi formed her own party known as the Congress (I) claiming that it was the original Congress. The other Congress was led by Nijalingappa, a former Chief Minister of Karnataka who was the President of the Congress party. The leaders of the Congress(O) were known as the Syndicate. In the election for the Presidency, V. V. Giri was declared President. The Bank Nationalisation Ordinance which was issued during Hidayatullah's Presidency was challenged and the whole Supreme Court comprising eleven of us led by J. C. Shah, acting Chief Justice, admitted the petition. The Syndicate was against this ordinance. So the Supreme Court had to determine an act which aroused serious controversy and whichever way it

ultimately decided it could not escape the criticism that is inevitable in such matters. During this time there was intensive activity. On one occasion Shri Vijayabhaskar Reddy called on me to congratulate me on my elevation as judge of the Supreme Court. As we were talking a messenger came up to say that Mrs Gandhi was on the phone and wanted to talk to him. Vijayabhaskar Reddy apologised and left in a hurry.

Immediately on my arrival and as soon as I could get away I called on Hidayatullah at his residence 5, Hastings Marg, which was the official residence of the Chief Justice. I was glad he did not shift to Rashtrapati Bhavan as soon as he assumed the office of the Acting President. He welcomed me and knowing my anxiety assured me about having an independent accommodation. He said he had already taken up the matter with the government. Since Dua was the Chief Justice of the Delhi High Court he continued to occupy the house allotted to him. Ray and I were the two who needed accommodation and both were still accommodated in the respective guest houses of our states. Ray seemed to be most concerned as he was with his wife and they found it uncomfortable to stay in the Bengal Guest House. The second problem was that of a secretary. I was allotted a person who was a typist but not a stenographer. When I gave him dictation I found him writing in Urdu. Since I knew Urdu I asked him whether he knew shorthand. He said he did know it somewhat but he could write better in Urdu. The other objection to having him as my stenographer was when he informed me that he could not come the next day as he was busy with some *vrath (pooja);* that I could prepare my case during his absence and when he came I could give him dictation. I asked him whether he had any more instructions to give me. I immediately phoned Rane, the Registrar, and after informing him about what taken place and the man’s total incompetence, I said I did not want to see him again and asked him to withdraw him immediately and assign someone else to me. I was then provided with someone well behaved. He was an average steno who did not come up to the standard I was used to, but I got on. I felt I had come down in my office in respect of this most essential requirement, by coming over to the Supreme Court. When I mentioned this to Hidayatullah after Giri took over as President, and he resumed his office as Chief Justice, he took me to his office and showed me that he was writing judgments in his own hand. I told him that if a Chief Justice was facing these difficulties, I had nothing to complain about and should cariy on as best as I could.

On 20 August my wife and daughter Urmila came over to Delhi. to London. My car and other luggage had not yet come. My wife had had these packed and sent by rail in a wagon. These items also arrived at about this time. After seeing off Urmila, my wife and I lived in the Andhra Pradesh Guest House. We made our calls on our colleagues and their families. Except Amarnath and Ray who were good enough to return our calls, it did not appear that other senior colleagues were accustomed to such return calls. I also started walking early in the morning on the Rashtrapati Road. Ray was also a regular walker and we used to meet there. We also used to meet a number of persons whom we started to get to know. The few persons whom we met regularly were Gajendragadkar, Hegde, and Shankar Dayal Sharma, later President of India. Shri Sharma was facing the problems created by the split, but ultimately decided to be a permanent member of the Congress (I). There were also one or two Delhi High Court judges. One of them was Justice Misra, who was a regular walker. The early morning walks did me a lot of good. Seeing me coming to and going from court in my Packard; my colleagues and others thought I was a rich man. They did not know that owing to the heavy fuel consumption of the Packard I was finding it difficult to maintain, till in February or March 1970 I sold it for Rs. 6,000 and bought a Fiat for Rs. 18,000. This Fiat was specially prepared for me by Hashmatulla who was working in Premier Automobiles. He was the son-in-law of a great friend of mine, Majidulla, who was I.G.P. of Bombay State. It was built with original parts of the Fiat which had been replaced by the indigenous parts. (This Fiat is still with me working wonderfully as on 3 June 1998!)

Towards the end of August, we started sitting in the Bench to hear the Bank Nationalisation Case. The respondents, the Government and the respective representatives of the fourteen bank managements and shareholders had to be served. During this period we were hearing other cases too. The very first case of mine which was reported in early September was heard by Sikri and Mitter JJ and myself, decided on 8 September ‘69 reported in 1970 (1) S.C.C. 8 in which I wrote the judgments. It related to the question of what constituted a grievous injury for the purpose of Section 126 IPC. It appears that the accused had caused injuries by *kantas* — a sharp instrument. All injuries except No. 1 were incised injuries that had cut the complainant. High Court of Allahabad had convicted the accused under Section 326. It was contended that since none of the injuries inflicted caused a fracture wound his conviction for grievous hurt was not justified. We held that it was not necessary to inflict only a fracture wound for such conviction. It was not necessary that a bone should be cut through and

through or that the crack should extend from the outer to the inner surface or that there should be displacement of any fragment. The conviction on the evidence being right, the appeal was dismissed.

In another case, also heard in September, I was a member of a five Judge Bench in *Smt Kanta Kathuria vs. Manikchand Surana, (AIR* 1970 SO: 694) sitting for the first time with Chief Justice Hidayatullah, along with Sikri, Mitter, Ray JJ. It was a case in which the question was whether an advocate appointed as a special government pleader in a particular case held an 'office' that caused him to incur disqualification to be elected as a member of the Legislative Assembly of Rajasthan. The High Court of Rajasthan held that the special government pleader who stood for election and was successful was holding an office of profit and as such was disqualified. During the course of the arguments it appeared there was likely to be a disagreement as Sikri was on one side and Hidayatullah and Mitter JJ. were on the other side. Ray showed his inclination to go along with Sikri. I however had not expressed any views during these discussions. While Hidayatullah and Mitter JJ. were of the view that though the M.L.A. was not holding an office of profit the disqualification stood removed by legislation with retrospective operation. For this reason the High Court's decision was not valid. Sikri and Ray JJ. held that the appellant as a special government pleader was not holding an office of profit. After the case was heard Hidayatullah turned to me and asked what my view was. I said on consideration that I could not agree with him and Mitter; consequently there were two judgments, one by Hidayatullah and the other by Sikri, Ray JJ. and myself. It appeared that Hidayatullah was expecting me to join him, because in his autobiography, *My Own Boswell,* he states that my disagreement in the very first case I sat on with him made him happy that he had selected a person who had not the slightest compunction in disagreeing with him. It may be that some of the judges who are nominated by a Chief Justice generally agree with the Chief Justice while sitting with him. The fact that I was not one such made him happy. I mentioned earlier that while sitting with Subba Rao CJ. soon after the formation of the Andhra Pradesh High Court I had disagreed with him and Ansari JJ. and wrote my own judgment of dissent. Speaking for myself I did not find anything extraordinary in this. I had noticed early the tendency of newly appointed judges while sitting with a Chief Justice who had nominated them to have compunctions about dissenting. To remove any such impression I used to frankly tell judges nominated by me as Chief Justice, when they first sat with me, that they need have no hesitation in disagreeing with me if they held disenting views, but they should not disagree

merely to show that they were independent.

While we were busy hearing the Bank Nationalisation Case and other cases, there was news of communal disturbances and riots having occurred on 18 September 1969 in Ahmedabad and throughout the state of Gujarat. We were all concerned at these disturbances which had enveloped one of the most important commercial cities, known for having a peaceful commercial community and a secular outlook. It appeared that the communal atmosphere in Ahmedabad and Gujarat had been gathering momentum for some time and flared up on an insignificant incident.

The Government of Hitendra Desai which belonged to the Congress (O) after Prime Minister Indira Gandhi had separated and formed her own party known as the Congress (I) tried to quell the rioting but ultimately had to call the army, after which law and order was restored. The Government had promised an enquiry. Little did I think I would get involved. One day towards the last week of September, I had a chit from Huddi (Hidayatullah CJ) during the afternoon session to see him after I got down from the Bench.

When I went to Huddi's chambers I found that Justice J. C. Shah was also present. Huddi told me that the Gujarat Government with the consent of the Union Government has decided to appoint a commission to enquire into the communal riots and had asked for me to be appointed as Chairman of the Commission. I told him that I was not prepared to accept the proposal as I did not give up my office as Chief Justice of Andhra Pradesh to come over to the Supreme Court to be a Chairman of Commissions of Enquiry. I had already done a commission into the *Mulki* riots in Hyderabad in 1952 as a Judge of the High Court and had no further desire to undertake another one. I said to Huddi that I had accepted his invitation to come over to the Supreme Court to contribute my mite to the law of India and not to undertake the work of commissions. Huddi said Indira Gandhi wanted me to take it up. I said, 'Who is Indira Gandhi to propose my name ? I have not even met her and have nothing to do with her.' In order to impress me further he said that Yeshwantrao Chavan, Home Minister, also wanted me to take it up. My reply was the same. It was then that he said in a most affectionate manner, 'Jagan, I want you to accept it. The communal disturbances are being exploited by foreign powers and India's reputation is involved. Besides this you come from the Nizam's State and have been brought up under a composite culture, so you are the proper person to head the Commission. I then said: 'Your making the request is different. Since you are my

Chief Justice and have shown great concern, I cannot deny your request.' After this he came out with the further news that there were two judges of the Gujarat High Court, who will be members of the commission. I said, 'Huddi, you didn't tell me this earlier, and gave me the impression that I was the only one heading the Commission. But since I have accepted your request I will say nothing more.' It was thus that I got involved in the Commission of Enquiry and lost almost a year of my work in the Supreme Court. Since I was already a member of the Bench hearing the Bank Nationalisation case I would at any rate be continuing to hear it and would be a party to the decision. A notification of the Government of Gujarat was issued on the 13 October, 1969. When the notification was published I came to know that the two judges who would be my colleagues were Justice Nusserwanji Vakil and Justice Akbar Sarela, both of whom I was told were school friends and were very close to one another.

As soon as the news of my appointment as the Chairman of the Commission Was published in the press, two of my colleagues, my Cambridge friend, Amarnath Grover and Ajith Nath Ray came to see me. Amarnath said: 'Your acceptance of the appointment is like a razor on your throat.' I said since I had accepted it, I would have to face the consequences, as any enquiry into communal riots was always a thankless job, exposing the persons enquiring to adverse comments.. He wished me well. Ray on the other hand had a different request. He said: 'Since you know Mrs Gandhi wanted you to be the Chairman, could you request her to see that we are allotted residential accommodation?' For even by then no one had bothered to make any efforts to help us in getting accommodation allotted. I told him that he was under the wrong impression. I didn't know Mrs Gandhi at all and even if I did, I would not go to her in my position as a judge of the Supreme Court to make any request for myself or for him. In the end it was Huddi who was able to get us accommodation when he told Mrs Gandhi that if we were not provided with accommodation, he would ask us to go back to our respective states where each of us had our own residences. This would result in adjourning the Bank Nationalisation case. She then called the Minister concerned and directed him to do the needful immediately. We then got our accommodation and shifted from our respective State Guest Houses.

As the Bank Nationalisation hearing was going on, there were adjournments to give time to the lawyers appearing to submit their respective written submissions. During one of these recesses I visited Ahmedabad, and met my

colleagues who were very friendly and cooperative. I requested the Chief Justice P. N. Bhagwati to give me a Registrar and to help me by assigning an efficient secretary, as a special officer, a superintendent and three reliable stenographers. Bhagwati obliged us with very good persons. One was K. K. Mehta as Registrar, another, D. H. Desai as the superintendent, and Sarvashri H. I. Bhatt, R.S. Pathak and I.S. Suphia as stenographers. I was also provided with a very comfortable residence on the banks of the river Sabarmati in which Chimanbhai Patel, a Minister had once resided. We were also provided with a very commodious Hall which belonged to the Parsi Trust, for holding our enquiry.

As soon as my colleagues and I met, we ordered our Registrar and the staff to go round all the police stations in whose jurisdiction riots had taken place to get the books where First Information Reports (FIRs) were entered and registers, logbooks etc. containing information regarding the riots so that it could not be said that they were subsequently manipulated. This action of ours was not expected by the police but since the orders were peremptory and the staff of the High Court on loan to us were dedicated and efficient persons all this material was gathered within a couple of days and lodged in the room allotted to the Commission in the High Court premises. It was only after these were procured and lodged in the High Court, that I left for Delhi to come back to issue a questionnaire in respect of the terms of reference namely:

to enquire into causes and course of the communal disturbances which took place in Ahmedabad and generally in other parts of the State of Gujarat on and after 18th September, 1969.

to enquire into the adequacy of the administrative measures taken to prevent the recurrence of such disturbances;

to recommend measures which may be adopted for preventing the recurrence of such disturbances; and

to consider such other matters relating to communal disturbances in the state as the Commission may consider germane to the above.

The Commission was expected to complete the enquiry and submit its report to the State Government by 28 February, 1970.

I will revert to the enquiry commission later after writing about the completion of of the Bank Nationalisation hearing and the decision pronounced by the Bench.

PART IV

16

The Bank Nationalisation Case

I have in my earlier chapter referred to the Bank Nationalisation Case and our commencing the hearing towards the end of August 1969. The nationalisation arose out of the schism that took place in the Congress party in July 1969 and a bid by Mrs Indira Gandhi, the Prime Minister, to consolidate her position. In this bid she had had issued the Banking Companies (Acquisition and Transfer of Undertaking) Ordinance which later became Act No. 22 of 1969. This ordinance provided for the takeover of banks with deposits of Rs. 50 crores and above. There were fourteen such banks at the time. The ordinance was challenged in the Supreme Court by one Rustum Cavasjee Cooper, who had current accounts in three of the nationalised banks, besides being a shareholder and a director. His contention was that the Ordinance infringed his fundamental rights under Article 14, 19 and 31 of the Constitution of India *(Rustum Cavasjee, etc. vs. Union* of *India*, (1 SCC, 1970: 248 decided on 10 February 1970).

The case came up before an eleven-judge bench presided over by Justice Shah. Chief Justice Hidayatullah who as Acting President of India had signed the Ordinance, did not hear the case. At the very outset, before arguments were about to commence, Justice Sikri informed the Attorney General Niren De that he had a few shares in one of the nationalised banks, and asked whether the Government had any objection to his hearing the case. If they had, he would withdraw from the case. Niren De immediately replied that the government would have no such objection. After this the arguments commenced. I mention this fact as it had serious repercussions later, after the judgement was delivered and the government felt its acquisition was nullified. This matter was therefore

brought before Parliament as it was said to have influenced the judgment against the government. Chief Justice Hidayatullah and the Speaker Shri Dhillon later settled the matter amicably. I shall refer to it in the next chapter dealing with my enquiry into the communal riots in Ahmed- abad and Gujarat.

After hearing the case there were two judgments—one by a majority of ten judges including myself. Justice Shah wrote the majority judgment while Justice Ray dissented. The majority judgment struck down the Act holding that though it was within legislative competence to take over the banks, the legislature could hot prohibit the named banks from carrying on banking business or forming new banks while leaving other Indian and foreign banks free to do so. It was also held that the legislation violated the guarantee of compensation under Article 31(2) as the principles laid down for determining the amounts of compensation were not relevant and that the compensation amount so determined could not be regarded as compensation. In effect the majority judgment held that the court can and will strike down laws which deprive a person of his property if the compensation provided is either illusory or the principles laid down for determining the compensation are not relevant.

We examined in detail the provisions of the Act and found that in awarding compensation to the owners of the banks, the goodwill of the bank had not been taken into consideration: nor had the Act provided compensation for the unexpired period of long term leases of buildings owned by the banks. The method of ascertaining the value of the assets, leaving the final determination to a Tribunal and the provision for deferred payments to the shareholders were all held to render the compensation illusory and in fact it was held that there was really no payment of compensation at all. We remarked that a bank is not like a grocer’s shop. A customer does not extend his patronage merely because it has a branch easily accessible to him. Section 4 of the Act which, in our view was the kingpin in the mechanism of the Act read with Section 5 and 6 along with Schedule II which provided for the statutory transfer and vesting of the undertaking of the named banks in the corresponding new banks, prescribed the undertaking. We said that these provisions were void as they impaired the fundamental guarantee under Article 31(2) and since sections 4,5 and 6 and Schedule II were not severable from the rest of the Act, the Act in its entirety must be declared to be void. Shah J. on behalf of the majority said, ’The Constitutional scheme declares the right to property of the individual under Article 19(l)(f) and then delimits it by two different provisions’. Article 19(5)

authorises the state to make laws imposing reasonable restrictions on the exercise of that right and clauses (1) and (2) of Article 31 recognises the Authority of the state to make laws for taking over property. Limitations under Article 19(5) and Article 31 are not generally different, for the law authorising the exerc.se of the power to take the property of an individual for a public purpose or to ensure the wellbeing of the community, and the law authorising the imposition of reasonable restrictions under Article 19(5) are intended to advance the larger public interest. 'This is consistent with what has been said earlier in *Swami Motor Transport Co. (P) Ltd vs. Shri Sankaraswamigal Mutt* (1963 Supp I SCR 282) that the guarantee under Article 19(l)(f) does not protect merely an abstract right to property, it extends to concrete rights to property as well.'

As regards the point that in this case the court went back on P. *Va- jravelu Mudaliar vs. SP Deputy Collector, Madras and Another* (1965 I SCR 614) and *State of Gujarat vs Shantilal Mangaldas and Others* (1969 (1) SCC 509), Shah, J speaking for the majority, observed that in the former case it was observed that the constitutional guarantee was satisfied only if a just equivalent of the property was given to the owner. In the latter case it was held that the compensation being itself incapable thereto by calling it 'just equivalent' or 'full indemnification', and under Acts enacted after the amendment of Article 31(2) it was not open to the court to call in question the law providing for compensation on the ground that it was inadequate, whatever the amount of compensation fixed by the law or to be determined according to principles specified therein. It was again pointed out by referring to the observations in the Shantilal Mangaldas case, that what was intended after the amendment was to clearly 'exclude from the jurisdiction of the court an enquiry that what is fixed or determined by the application of the principles specified as compensation does not award to the owner a just equivalent of what he is deprived'.

After pointing out what was observed in Vajravelu Mudaliar's case about the effect of the amendment of Article 31(2), Shah J. referred to Shantilal Mangaldas's case and said that 'the Court held that the Constitution (Fourth Amendment) Act. Article 31(2) guarantees a right to receive compensation for loss of property compulsorily acquired, but compensation does not mean a just equivalent of the property. If compensation is provided by law to be paid and the compensation is not illusory or is to be computed by the application of relevant principles, the law is open to challenge on the ground that compensation fixed or determined to be paid is inadequate.'

Regarding the two lines of thought (Vajravelu Mudaliar's case and Shantilal's case) Justice Shah observed: 'Both the lines of thought which converge in the ultimate result, support the view that the principle specified by the law for determination of compensation is a recognised principle applicable in the determination of compensation for property compulsorily acquired and the principle is appropriate in determining the value of the class of property sought to be acquired'. This, in my view, is the *ratio* of the decision in the Bank Nationalisation case. That this is so, is clear from what follows next when it was stated categorically that 'On the application of the view expressed in Vajravelu Mudaliar's case *(supra)* or in Shantilal was struck down as it fails to provide to the expropriated banks compensation determined according to the relevant principles'. It then went on to point out, that where the Act failed in laying it as a *sine qua non* for determining compensation even under the amended clause (2) of Article 31 on the *ratio* of the earlier decisions, it had to be struck down, if it be only on this ground, though it was also compensation. It was observed, 'We are unable to hold that a principle specified by the Parliament for determining compensation of the property to be acquired is conclusive. If that view be accepted the Parliament will be invested with a character of arbitrariness and by abuse of legislative process, the constitutional guarantee of the right to compensation may be severely impaired. The principle specified must be appropriate to the determination of compensation for the particular case of property sought to be acquired. If several principles are appropriate and one is selected for determination of the value of the property to be acquired, selection of that principle to the exclusion of other principles is not open to challenge, for the selection must be left to the wisdom of the Parliament.'

The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities. Where there is an established market for the property acquired, the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition.

The judgment of the majority then referred to the important methods of determination of compensation and pointed out that they are not the only

methods. It pointed out other methods in which goodwill was also shown to be an asset (though an intangible asset) requiring valuation. No doubt the Government was certain after the decision in Shantilal Mangaldas's case that the impugned legislation would be upheld, particularly when the judge who pronounced the earlier judgement was presiding in this case also. When, however, the largest bench, namely the entire court, was constituted, the law officers of the Union ought to have briefed the Government that the entire question was *res integra*.

Severe criticism was directed against this judgement, because, among other things, the issue was so inextricably linked with political expediency, with the group running the government being anxious to establish that the schism in the party was necessary to further socio-economic objectives through the nationalisation of banks, and that it was the judiciary that was obstructing the plans for the uplift of the poor. Consequently the court came in handy to be whipped as a scapegoat. It should not be forgotten that the Bench which determined the Bank Nationalisation case was as I said a Bench of the Full Court of eleven judges. The efficacy of such a full court to review and reconsider the entire previous law and to determine the issue before it, unfettered by the previous decisions of the Court, to lay down what it considered to be the proper legal approach and determine the scope and ambit of Article 31(1) and (2) and 19(l)(f) and other relevant provisions pertaining thereto, was unquestionable. In doing so, if the Court wanted, it could have overruled Shantilal Mangaldas's case or any other case, if these decisions were not in accordance with the view of the law the larger Bench took. The larger bench of the full court was, in fact, constituted for the purpose of laying down authoritatively the law in respect of the issues involved in the Bank Nationalisation case. We were not fettered by the previous decisions, except to examine the *ratio* and to note the judicial history of the pronouncements of the court on the issues that arose in the Bank Nationalisation case. It is quite possible that in examining the earlier decisions there may have been some ambiguity or ambivalence as it may appear to the critics. But as I said, there is no gainsaying the fact that, in our view on a reading of the provisions of Article 31 and 19(l)(f), what the law on the question of compensation should be has been stated by us unambiguously even though it can be said, as Tripathi did, 'Back to square one!'. We held that though the 1955 amendment had clearly laid down that the adequacy of compensation provided by law of acquisition shall not be questioned in any Court, the Court might interfere not only where the compensation provided was illusory but also where

the princi-ples for determination of the compensation as specified by the law were irrelevant to the concept of compensation as previously held by the Court. The argument was founded on the ground that the word ‘compensation’ was still retained in Article 31(2) by the 1955 amendment, and since the juristic concept of ‘compensation’ was that it was "the equivalent in terms of money of the property compulsorily acquired’, the principle for determination is intended to award to the expropriated owner the value of the property ac-quired. Such a principle, again, must be appropriate to the value of the class of property which is being sought to be acquired by a particular law. In other words the Legislature must lay down such principles as are (a) relevant to compensate the expropriated owner: and (b) appropriate to the class of property sought to be acquired. Whether this was going back on the earlier law or taking a right- about-turn from Bela Banerjee’s case, that in our view, was the *ratio* of the decision. That the so-called progressive elements however did not approve of this judgment is evident from the severe criticism that was directed against the Supreme Court.

I was one of the judges who thought that in a matter of vital importance, there should be only one judgment so that there would not be many contradictions which might become apparent if several judges wrote different judgments. I am not disclosing any secret when I say that the draft judgment prepared by Shah J. was circulated to all the judges, including Ray J. who gave a dissenting judgment. We then had several conferences at Shah’s house at intervals and went through the draft thoroughly on each aspect of the draft, debated matters for hours, deleted passages, added new ones and ultimately finalised the judgment. In all this, as I said Ray J. was also present and because he had his own views which were at variance with the majority, he wrote a separate judgment which was also circulated to the others. We had, therefore, the benefit of his views also. On second thoughts, some may consider it to have been better if the majority judgment was written by the next senior judge to Shah, as Shah had delivered the judgment in the case of Shantilal Mangaldas. But, at the same time, because he wrote the judgment in the case of Shantilal Mangaldas it would have been more appropriate for him to have explained what the Shantilal Mangaldas case meant. Be that as it may, if some of us had written separate judgments agreeing with Shah J. we would have laid ourselves open to the same criticism that was directed against us when we wrote separate judgments later in 1973 in the Keshavananda Bharati case. In spite of this, in retrospect, I think it would have been better if some of us also had expressed our views unfettered by our being party to the earlier decisions.

In so far as the criticisms relating to compensation were concerned, I have already indicated what in our view was the *ratio* of the decision. It is not difficult to pick a passage here and a passage there and comment thereon that the *ratio* was not what we had said it was, and that we had adhered to 'market value' or 'just equivalent' being the criterion for determining the compensation under the amended clause (2) of Article 31. There is academic freedom to delve into microscopic details to build up a case of inconsistency. We had given cogent reasons for striking down the Act for its not permitting the companies to do banking business. Professor Tripathi's analogy that this was-similar to the case of being prohibited from growing potatoes on his land after it was taken, while the neighbour whose land was not taken was not so prohibited, cannot be said to be apt, because once the land has been taken over, the expropriated owner has no more interest in that land and can have no grouse, whether he is prohibited from growing potatoes in that land or not. It is immaterial for him what the acquirer of the land does with his land after it is acquired. Under the Bank Nationalisation Act, after the business of the banks was taken over, the companies were not dissolved. They were still corporate entities and were permitted to do business, whether that permission meant anything or not. In law, therefore, they could do any business, except once again the banking business. If the company was prohibited from doing banking business in the same name as it had done earlier, when its banking business was nationalised, I could understand the restriction as being reasonable. Again, what was objectionable and remained so even after the goodwill had been valued was the restriction imposed upon the right of named banks to carry on non-banking business. If the compensation paid was in such a form that it was not immediately available for restarting any business, the permission to carry on business other than banking business became an empty formality when the entire undertaking of the named banks is transferred to and vested in the new banks together with the premises and the names of the banks and also the named banks were deprived of the services of its administrative and other staff. These circumstances made it impossible in a commercial sense for the banks to carry on any business at all.

It has been pointed out that the Government ultimately paid not merely just but exorbitant compensation (Rs. 70 crores) to the banking companies for the acquired undertakings and assets by the virtue of the Bank Nationalisation Act. This may no doubt be the case, but there are ways in which the banks could have been acquired for much less. The Act could have specified the amount of compensation in respect of each bank and if it did, that could not have been

questioned; or alternatively the shares of each bank could have been acquired and this could not have been challenged, as earlier the Life Insurance Corporation, the Imperial Bank of India, State Bank of Hyderabad, etc., were acquired by this method, or it could have set out principles computing the amount of compensation which were relevant (as stated in the majority). The Act did none of these.

When the Attorney General submitted that the compensation calculated according to the method provided in Schedule II exceeded the total market value of the shares, I asked him why the Government had not acquired the shares. His answer was: Then people would have blamed the Government for taking them over for a song/ I responded that if these banks could be taken over validly under law for a song, would not paying a higher price by another method, be contrary to social justice according to which the property which is to be expropriated should be bought for as little as possible, to serve the poor? In any case, the taxpayer's money was involved and consequently, we, as tax-payers, would be less affected if a smaller amount was paid as compensation. What I asked the Attorney General, his reply, and mine to him,were not recorded. Therefore, people do not know even today that this could have been done but was not done, because the media did not report it; nor was there any inclination at that time to show that the Government could have done better than what it did to save the taxpayer a lot of money.

No doubt Professor P. K. Tripathi did later comment that the government was paying more compensation even under the invalid law than what it would have had to pay if it had purchased the shares of the banking companies on the market. As the criticism of the Supreme Court in the Bank case was that it was oriented towards the rich and depriving the poor, I had enquired from the Reserve Bank of India in 1978 as to the exact position of the amount of compensation paid to each of the fourteen banks individually and what it would have paid if it had paid the market value. Their reply of the 15 May 1978 through Shri M. P. Dhage on behalf of the Reserve Bank of India was interesting. I am giving here a copy of the letter to me enclosing therewith two enclosures (i) second schedule to the Bank Companies (Acquisition and Transfer of Undertakings) Act, 1970; and (ii) Book value and market value of shares of nationalised banks.

Letter

15th May, 1978

Dear Justice Reddy,

I am writing this in connection with the information you required regarding the value of Nationalised Banks shares. I am enclosing two statements which I hope will be useful to you. I am also looking for further information on the subject and shall write to you as soon as I am in a position to do so.

With kind regards,

Yours sincerely,
(M P Dhage)

Enclosure 1

Second schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970

Name of the Existing Bank	Amount of Compensation (Rs. in lakhs)
The Central Bank of India Ltd	1750
The Bank of India Ltd	1470
The Punjab National Bank Ltd	1020
The Bank of Baroda Ltd	840
The United Commercial Bank Ltd	830
Canara Bank Ltd	360
United Bank of India Ltd	420
Dena Bank Ltd	360
Syndicate Bank Ltd	360
Union Bank of India Ltd	310
Allahabad Bank Ltd	310
The Indian Bank Ltd	230

The Bank of Maharashtra Ltd	230
The Indian Overseas Bank Ltd	250
Total:	Rs.87.40 crores

Ref : *Bank Nationalisation and the Supreme Court Judgement* edited by Dr L.M.Singhvi, page 247.

Enclosure 2

Shares	Paid up Value	Book Value	Market Value
1 Central Bank	25.00	62.42	51.30
2 Bank of India	50.00	129.61	98.50
3 Punjab National Bank	10.00	34.08	23.50
4 Bank of Baroda	50.00	113.28	93.50
5 United Commercial Bank	50.00	124.21	69.50
6 Canara Bank	50.00	112.59	68.13
7 United Bank of India	10.00	14.99	8.55
8 Dena Bank	50.00	117.44	62.00
9 Syndicate Bank	10.00*	20.45	19.85
10 Union Bank	5.00	9.63	6.56
11 Allahabad Bank	100.00	265.03	260.00
12 Indian Bank	100.00	232.30	125.00
13 Bank of Maharashtra	50.00	67.93	53.00
14 Indian Overseas Bank	100.00	214.81	117.50

* Based on shares of Rs.10 paid up.

Source: *Economic Times*, 22nd July, 1969

Ref: *Bank Nationalisation in India – A Symposium* – edited by Narendra Kumar – Page XVIII.

The comparison with the compensation shown in these enclosures demonstrate without a doubt the view expressed by me to the Attorney General about the great economic advantage which the state would have had while propagating Indira Gandhi's slogan of *Garibi Hatao. A* cursory examination shows the allegation against the Judges%of the Supreme Court to be totally unjustified.

In spite of the facts, after the Bank Nationalisation Act was struck down, the new enactment under which the banks were nationalised gave more money, i.e.,Rs.87 crores, forty lakhs after complying with and rectifying the defects pointed out by us, instead of acquiring the shares at the market rate prevalent on the days of the first nationalisation ordinance. The criticism against the Court that because of its judgment the taxpayer had to pay a fabulous sum to the nationalised banks has no justification whatever.

I have indicated sufficiently the bristling difficulties which this question poses because, it appears to me, that the urge of the State to appropriate the private property of the individual without payment of compensation and the resistance of the owners of the private property against such attempts is an ever-continuing one, notwithstanding the effacement of the right to property as a fundamental right by the 44th Amendment when Articles 31 and 19(l)(f) were deleted and in their place Article 300 A was inserted making the right to property orily a constitutional right.

It appears to me that the test of reasonableness or 'the relevancy of principles' in assessing the compensation or amount to be paid for expropriation of property may unconsciously lead the Court to determine the question on consideration of adequacy however imperceptible that tendency may be, and however consciously it may find itself that adequacy is no longer relevant, opening it to the criticism of ambivalence. When the might and the power of the State is exercised to expropriate private property an element of unequal and unfair consideration may enter the process of adjudication. In view of this, there is great merit in the constructive suggestion made by Prof. P.K. Tripathi that 'it will be wiser perhaps, to reject the ambivalent and by now utterly meaningless

formula of “relevancy of principles” and to adopt a more concrete and practical approach, somewhat analogous to that adopted by the Supreme Court speaking through Mr Justice Gajendragadkar in *M.R.Balaji vs. State of Mysore* that ‘any reservation exceeding 50 per cent of seats in an educational institution will be held unreasonable and, therefore, unconstitutional.‘ On the same pattern he suggests that the Court might also hold that any award of compensation which indemnifies the private owner to the extent of less than fifty per cent of the market value of the property acquired will be treated by the Court as violative of clause (2) of Article 31: and that where the compehsation awarded indemnifies him to an extent of not less than fifty per cent of the market value the Court will treat the compensation as possibly inadequate but not illusory or violative of the constitutional guarantee. This formula may not have the glamour of ‘relevancy of principle’ but it is one which the Government, the private owner and the Court will all be able to comprehend with clarity.

17

The Communal Riots Enquiry

In Chapter XV I referred to the circumstances in which I was appointed Chairman of the Commission of Enquiry dealing with the communal riots along with two judges of the Gujarat High Court, Justices Nusserwanji Vakil and Akbar Sarela. I have also in that chapter referred to the contents of the notification of 13 October 1969 giving the terms of reference of the enquiry into the cases. I had also mentioned earlier the meeting of the members of the commission on 13 October 1969, the various instructions given to the staff appointed by it and the immediate action taken by it with regard to the safeguarding of the records. At the same time we also had a notification issued both in the State Government Gazette and in the English and Gujarati newspapers inviting all persons acquainted with the subject matter of the enquiry to furnish to the commission statements giving detailed information as regards the communal riots in Ahmedabad and other places on and after 18 September 1969. We also had to deal with information on the situation prior to the disturbances, whether the authorities had any information in this regard, about groups and organisations fomenting communal trouble, about places of worship and religious institutions, processions, festivals, etc. which tended to create friction between different communities, about any attempt by the local press to deal with news and issues in a manner that might create communal tension, whether the Government had taken adequate steps before and during the disturbances to protect the life and property of the people, to reduce tension and to care for those rendered homeless.

Apart from this we also sent a letter to the State Government on 15 October

1969 calling for information on all the items set out in the notification and in particular regarding existing arrangements for collection of intelligence concerning communal tension, the arrangements made for preservation of peace when religious processions were taken out, the strength of the police force equipped with the takeover by the military and details of relief and rehabilitation measures.

In order to ensure that there was no scope for any suspicion or allegation that material record or records were subsequently prepared, we had called for the production of the relevant records, books, logbooks, note books, slip books or any other record on which the message received at the control room on telephone, wireless channel or otherwise had been noted, the records showing action taken by the control room and records showing all outgoing messages. We had called for these records pertaining to the period 17 to 25 September 1969.

Simultaneously we had called for relevant records from the deans and superintendents of the three hospitals in Ahmedabad — the Civil Hospital, the Vadilal Surabhai Hospital, Ellis Bridge, and the Lallubhai Gordhandas Hospital, Maninagar without delay before 29 October 1969 containing details for the period 18 to 26 September 1969 about the dead bodies and the injured, nature of injuries, the treatment and the date or dates of discharge.

During the hearing we also called for the daily reports from 1 December 1968 to 7 November 1969 and also special reports for the same period submitted to the government by the special branch of the Police. Since the government claimed privilege for these documents, we went through these reports and were not inclined to make these available for inspection and use by organisations appearing before the commission.

We also asked the government to produce for our perusal the fortnightly secret abstracts from the Central Government containing information regarding communal matters circulated to all state governments, but the Central Government pleaded inability, as it had been its consistent policy not to make available such reports to anybody outside the Government. Of course the directions to submit the Commission’s report by 28 February 1970 could not be complied with, as I was engaged in the hearing of the Bank Nationalisation case. The period of the duration of the Commission which was earlier fixed was therefore extended to 31 October 1970.

The preliminary meeting was fixed for 6 December 1969. The meeting was held

on the due date in Nowrojee Hall, at which apart from the Government being represented by the Advocate General, the Government Pleader and the Assistant Government Pleader, the Communist Party of India, the Communist Party of India (Marxist), Hulladi Pidit Sahayata Samiti, the Central Relief Committee, Ahmedabad, Jamiat-ul-Ulema-e-Hind, the Citizens Council, Ahmedabad, the Bharatiya Jana Sangh, Gujarat, and the Hindu Dharma Raksha Samiti were represented by their respective advocates. At the hearing, the learned advocates for the Government were asked to produce certain documents, but it was pointed out to them that they had already been called for at the initial stage when the commission met on 15 October, 1969. On 4 December 1969 the commission received a letter from the Government under the proviso to rule 2 of the Gujarat Commissions of Enquiry Act to hold the sittings of the commission in private.

Immediately after the receipt of this letter of request from the Government that the sittings should be held in private, I as Chairman, indicated to the Advocate General that I could not accept the request and if this was insisted upon as far as I was concerned, I was prepared to withdraw from the Commission. I made it known that I had not consented to be the Chairman of the commission to hold secret enquiries. This in my view was derogatory to the dignity and prestige of the highest court. The Advocate General immediately implored that I should not take any final decision as he would consult the Government and advise them. I pointed out that the Government view, if agreed upon, would have the opposite effect by further opening the wounds of those whose kin were killed or injured in the riots. I pointed out that an enquiry held in public would give them an opportunity to pour out their agony, and to a large extent the objectivity of the enquiry would comfort them. After this I received another letter from the Government withdrawing the direction earlier given, indicating the apprehensions of the Government upon which the directions were given. I felt I was justified and my colleagues supported me fully. I had, even a long time after the enquiry, expressed my views on this aspect in an article published in the *Statesman* of 29 May 1987 when Justices Thakkar and Natarajan of the Supreme Court, appointed to enquire into the Fairfax case, held the enquiry in secret. This action of the judges had raised apprehensions in the minds of the public and the press. In that article I referred to how I was asked to hold an enquiry in the Ahmedabad communal riots in private and I had refused to do so. I had pointed out that the Government in their letter while explaining its request for private sittings stated that public sittings might jeopardise communal peace which had been restored after considerable effort. It also pointed out the risk involved by

press coverage from different angles which could not be prevented in the case of public sittings. With this explanation the matter was left to the good sense of the Commission, though the Government might request private sittings if it felt at any stage that the public enquiry might disturb communal amity.

The commission finally directed that the entry of the press to the hearings would be regulated by passes which would be withdrawn in case of tendentious or inaccurate reports. Depending upon exigencies the sitting could be in private for any particular witness or witnesses. Thereafter the proceedings were held in public throughout. Before the recording of evidence commenced, the Advocate General and the advocates representing various organisations, addressed the commission setting out their viewpoints and what according to them were the causes and the courses of the riots. In view of the magnitude and intensity of the riots and damage to property and loss of life we thought it necessary and desirable to give an opportunity for expression of all points of view, to afford satisfaction to all concerned that nothing relevant was left out from consideration in arriving at our findings.

The recording of evidence was completed on 7 August 1970.

In all we held one to four sittings and devoted four days for inspection of sites and examined 119 witnesses. The depositions ran to 1532 pages and the affidavits of witnesses examined to 1426 pages. All affidavits put together totalled to 27,041 pages. As suggested by the Commission the government pleader and other advocates filed brief written submissions which came to 1032 pages.

Considering the terms of reference, the extensive areas affected by the disturbances and their intensity particularly in Ahmedabad, Baroda, Nadiad, etc., and the volume of evidence, our report had to be voluminous — running to more than three hundred pages with one thousand to one thousand two hundred words per page. In view of the volume of evidence and submissions to be considered it was not possible, in spite of our best efforts, to make the report briefer than it was.

In the enquiry we gave every facility to the organisations assisting in the enquiry and called for all information and documents which we considered relevant whenever they were brought to our notice. When the viewpoints of the various organisations became clear after extensive cross-examination of several witnesses, we suggested that organisations representing the same viewpoint

should conduct cross-examination thereafter through only one advocate with full liberty if necessary to seek further cross-examination. This was accepted by all the advocates but a fortnight later the Ahmedabad Relief Committee sought to go back on the arrangement insisting that the viewpoint of the Muslims was not being properly brought out. The commission was not inclined to agree with the Committee's argument but felt it desirable to revert to the old arrangement so as not to give scope for any sense of grievance.

In the case of Commission witnesses no cross-examination was allowed but if the representative of any organisation wanted them to be examined on any particular point not covered earlier, the Commission acceded. Subsequently, in the case of Mr Balraj Madhok and the Chief Minister and the Deputy Chief Minister, both the communist parties pleaded that they should not be treated as Commission witnesses but we rejected the plea, as we felt that an attempt would be made to politicise the enquiry. It was outside the scope of the enquiry to go into political or communal ideologies. In our view such a course would lead to acrimonious and unseemly political dialogue and a confrontation between the witness and representatives of these parties for which this forum was not the appropriate place. Neither the Jan Sangh nor any other political party was on trial though allegations had been made against one another on political and ideological grounds.

I would like to mention here that when I returned to Ahmedabad in February to continue the work of the Commission, after the Bank Nationalisation judgment was pronounced, I received a letter from Chief Justice Hidayatullah, that after the pronouncement of the judgment there was an allegation in the Parliament by members of the Congress (I) that the same judges who took part in the hearing had owned shares in the banks which were nationalised and that an attempt was being made to denigrate the judgment which went against the Government's efforts to nationalise the banks. A great deal of criticism was directed against the judges. The Chief Justice who was not a party to the judgment was trying hard to see that such discussions or questions against judges not being proper in Parliament ought not be permitted to be raised. He had a conference with the Speaker about it. In his endeavours to stop such attempts, he first wanted to know whether any of the judges in fact had an interest in any of the nationalised banks. I had earlier mentioned that Justice Sikri at the very first hearing of the Bank Nationalisation case had informed the Attorney General Niren De that he had a few shares in one of the Banks which were nationalised and asked whether

the government had any objection to his hearing the case. When the Attorney General De said it did not, Sikri and we heard the case. The letter from the Chief Justice really upset me. I phoned him and asked why we were being questioned if we had any holdings in the nationalised banks after the government had answered Sikri's question. As judges, it was for us to have disclosed at the time of the hearing if we had any such interest. In such circumstances I felt reluctant to answer any such question as it cast doubts on my integrity, as indeed that of my other colleagues. Huddi said this was being done, in fact, with a view to avoid unpleasantness and it wass better to let them know how improper it was for them to assume such conduct on our part. Anyway I wrote to Huddi that neither I nor my parents, brother, sister or anyone in my family had any holdings in the banks because my father did not consider investment in bank shares to be beneficial. After this Huddi succeeded in convincing the Speaker who ruled that questions about the conduct of judges could not be allowed.

In the discharge of its task the Commission, being a fact-finding and not a fault-finding body, had to face many handicaps. Various political parties and organisations had exploited the riots and the unfortunate consequences to draw mileage and it was sought to give a political and communal orientation to the enquiry. Many statements by political and religious leaders, and newspaper columnists had been published, pronouncing verdicts on the riots. In many cases such statements had been issued after a visit to the riot affected areas lasting a few hours to a day or two. The result was that the police was forewarned of the accusations they would have to face from political parties and religious organisations. The people who were eye-witnesses and those who had suffered were influenced by the pre-determination of the causes by interested people. We had a feeling that many persons who could have given unbiased evidence as independent witnesses did not come forward.

Both the communist parties, the Jamiat-ul-Ulema-e-Hind, Ahmedabad and the Central Relief Committee dubbed the Jan Sangh and the RSS communal organisations and said their philosophy and ideology were responsible for arousing anti-Muslim feelings which resulted in the riots. On the other hand, the Jan Sangh, Hindu Mahasabha, Hindu Dharma Raksha Samiti and Hulladi Pidit Sahayata Samiti argued that the Communists had been wooing and encouraging Muslims to get their votes and that Jamiat-ul- Ulema and the Jamaat-e-Islami were communal and were arousing anti-Hindu feelings in Muslims. It was also argued that the Congress had been pampering Muslim communalists in the name

of secularism and had welcomed into its fold, members of the Muslim League who had actively campaigned for Pakistan and who did not change their communal attitude nor cease communal activity. Our terms of reference would not permit us to examine and determine the ideologies, philosophies or the nuances of these organisations to assess their likely impact on the arousal of communal feelings. Nor were these parties on trial before us.

At the close of evidence on the 7 August 1970, the main advocates who appeared before the commission, when they expressed their satisfaction and full confidence in the commission in the way it had conducted the proceedings, I as Chairman on behalf of myself and my colleagues addressing Mr Mehta (on behalf of Government), Mr Shaikh, Mr Barot and Mr Peerzada replied as follows:

‘We are gratified to hear from you that you have implicit confidence in this Commission and its anxiety to arrive at the truth and its ultimate report whatever that may be. There is nothing more satisfying than this at the end of a long arduous endeavour in which you and we have taken part. I shall not consider us to be separate from you and I have never done that. In so far as you gentlemen are concerned you were strangers to me though my learned brothers M/s Justice Vakil and Sarela were well known to all of you. But we have come to know one another during the course of the last eight months.

‘After my long sojourn here at Ahmedabad for about eight months out of the twelve months I was away from Hyderabad and I did not know I would spend so much time here, Gujarat has become almost a second home for me after Hyderabad. On behalf of myself and on behalf of my learned brothers M/s Justice Vakil and Sarela, I would like to say that during the course of this inquiry the heat of debate, the anxiety of getting at the truth and your intense concentration may have made you act sometimes in a particular manner, to which you referred and asked us to overlook it. But I want to assure you that on our side nothing has influenced us and whatever was done on the spur of the moment has had no impact upon the happy association which we have had for the last eight months. I can assure you that speaking for myself, because I was a stranger to you, I carry very happy memories of these eight months, and I am sure my learned brothers M/s Justice Vakil and Sarela also join with me in thanking you for your industry, co-operation, zeal and anxiety to assist us. We well understand the anxiety of certain sections of the community after this great holocaust to see that everything is placed before us in the manner which will

gave us the benefit of that material and enable us to draw conclusions which may help to avert the future course of such events and see that such recurrence would not take place not only in this state but in other states also. We shall do whatever we can within the terms of reference and what report we shall give we ourselves do not know, but when it is given I think you will be able to see that we have done our best.'

Before discussing the evidence, etc. in our report we gave details of the topography of the city of Ahmedabad — the old walled city area and the newly developed areas, details of population and police divisions and stations, etc.

The riots erupted in Ahmedabad and elsewhere in Gujarat following an incident which allegedly took place on the afternoon of 18 September 1969 at the Jagannath Temple in Ahmedabad. The intensity of the riots and the speed with which they swept across the State and the consequent human carnage and destruction of property were unparalleled not only in Ahmedabad city but in the whole state. Almost the entire city including areas like Ellis Bridge and Navrangpura where the educated and well-to-do and middle class people reside was affected. The districts affected include Baroda, Kaira, Mehsana, Sabarkantha, Banaskantha, etc.

While some traced the cause of the riots to events as old as the plundering of Hindu temples by Mahmood of Ghazni, others cited the politics of Muslims demanding partition of India, Pakistan's hostility towards India, Pak aggression in Kashmir and subsequent anti-India propaganda campaign and the Sino-Pak axis against India. Some others attributed the riots to the activities of organisations like the Bharatiya Jana Sangh, the RSS, the Hindu Mahasabha, the two Communist parties, Majlis Mushawarat, Jamait-ul-Ulema-e-Hind and the Jamaat-e-Islami. Another line of thinking attributed the riots to factors like the communal riots in Gujarat between 1964 and 1969, the speeches made at the conference of Jamiat-ul-Ulema-e-Hind (Ahmedabad, June 1969), the RSS Camp (Ahmedabad- December, 1968), Quran incident (March 1969) Al Aqsa procession (August 1969) and Odhav and Ramayan incidents (September 1969).

The Quran incident: an irate mob of Muslims attacked the police, and also public and private property when a handcart owned by a Muslim was toppled when the police pushed it to one side after the owner refused to comply with repeated requests to move it. The cart carried some books which included a copy of the Quran.

Al Aqsa Mosque : a large procession of Muslims was taken out to protest against the alleged desecration of Al Aqsa Mosque in Jerusalem. Slogans like ‘Humse Jo Takraega Mitti Me Miljaega’ were shouted, although permission for the procession was obtained on the promise that it would be a silent procession.

Ramayana incident : a Muslim police sub-inspector was alleged to have disturbed a Ramlila programme, dispersed the crowd by force, hit the table on which a volume of the Ramayana and *arti thali* were kept as a result of which they fell down. The police sub-inspector was further alleged to have kicked the sacred book.

The Odhav incident: Some maulvis who had gone to Odhav village near Ahmedabad were alleged to have been assaulted when they were trying to construct a mosque on an open site. It appears there were no Muslims in the village at all.

While it was not for us to determine which organisation or party was communal, there could be little doubt that the communal atmosphere in the country and that in Ahmedabad and rest of Gujarat were no different and were closely interlinked with the conditions obtaining in the country, i.e., communal bitterness generated by the Muslim League demand for and the subsequent partition of India, Pakistan’s aggression in Kashmir, Sino-Pak axis, Pakistan’s treatment of its Hindu minority and the resultant migration of Hindus from Pakistan to India with their tales of woe, political parties exploiting the communal feelings for political gains, prejudice resulting from ignorance of each other’s religions and religious susceptibilities, and lack of understanding of one’s own religion resulting in obscurantism and bigotry. In view of the limited scope of terms of our reference we did not delve deep into the political, religious, politico-religious, politico-economic and psychological reasons for the communal discord and riots, we confined our enquiry to the causes which were not too remote and could reasonably be said to have led to the riots.

We discussed in detail the evidence relating to all the incidents mentioned, the alleged role of the press, rumours, the police set-up and its functioning, the relief measures, etc., and came to the conclusion that despite the pre-partition communal riots (1946) the people of Gujarat in general and those in Ahmedabad in particular were, by and large, not affected by communalism but were only engaged in controversy on economic and social problems. But the Quran, Al Aqsa and Ramayan incidents taken together led to communal tension.

The immediate cause of the riots was the Urs at Bhukhari Saheb's Chilla near the Jagannath Temple when some cows belonging to the temple shied and damaged the carts on which Muslims were selling goods. The Muslims whose carts were damaged attacked the *sadhus,* and also pelted stones at the temple damaging the main door of the temple and the images of Lord Krishna and some *mahants* encased therein. The incident aroused the communal passions of the Hindus. Havoc was caused by rumours and provocative news reports. The police were caught napping and had misjudged the seriousness of the situation as evidenced by lack of firmness in the initial stages in dealing with the rioters, ineffective patrolling, breakdown of the special branch, delay in imposing curfew and its subsequent ineffective enforcement and the delay in calling out the army.

We, however, feel there is no justification to say that the Government or the police allowed the rioters a free hand to enable decimation or genocide of Muslims. Once the situation went out of control the police were overwhelmed by events.

The riots broke out on 18 September, and in the course of four or five days in Ahmedabad alone around 500 persons were killed, 370 were injured, over twenty thousand were rendered homeless and the damage to property movable and immovable was estimated at about Rs.4.23 crores. The riots in the districts though widespread were not so intense as in Ahmedabad city and the loss of life and injury to the person was considerably less. On one occasion when the armed constabulary was called they were asked to deposit their firearms in the police station and take up *lathis* to control the riots. The commander of the armed police refused to do so. This only showed the anxiety of the police force not to use armed force with firearms for fear of causing deaths and casualties. It is only after the army was called out and they took over that the riots were controlled. If the decision to call out the army had been made earlier and firm action taken, the riots would have been controlled immediately.

Some of our recommendations were (a) moral lessons should be included in the school curriculum to promote mutual understanding between people of different religions; (b) there should be a person to report to the authorities whenever newspapers and periodicals carried matter likely to disturb communal harmony; (c) there should be pre-censorship of news relating to communal matters; (d) a punitive tax should be imposed firstly as a deterrent and secondly to compensate the victims; (e) there should be a riot commissioner for each state to coordinate the efforts of law-enforcing agencies during disturbances (f) the police force

should be strengthened both numerically and as regards equipment and (g) the special branch should be reorganised to make it more effective and efficient.

In conclusion (vide Chapter XVIII, Conclusions and Observations) we observed that a harmonious existence between Hindus and Muslims – nay all the communities- would help build an apparatus which promoted a sense of participation and partnership among all sections of the society. We ended our report with the following observations:

To blame the communalist of any one community will not solve the Hindu-Muslim problem. It should be a high act of statesmanship to create a sense of belonging to one nation in which the people of different religions feel free to carry on their respective vocations, contribute to the progress of the nation and be ready to defend and preserve it against external and internal dangers. It may be stated that the Hindus and Muslims sometimes quarrel on religious issues. Fundamentally it is a question of political power (see Panikkar: *The Future of India and South East Asia*, pp.30-32). As long as this idea of oneness is not inculcated in all sections of the people of India, there is bound to be internecine trouble and strife. The problem must be solved by political and social leaders as it is they who can initiate action and create conditions to inculcate that feeling. We must leave it to those whose responsibility it is to devise and prescribe norms and to give proper orientation to inculcate that feeling and achieve harmony and make for a better society than what we live in.

What we have suggested can only be on what appears to us to have been failures or deficiencies in the prevention and control of riots. But what causes the conditions for communal strife or any other strife and gives rise to violent eruptions and riots, is certainly for others who are responsible for national thinking to consider, and if need be, it could be determined by a National Commission on Communalism. Merely blaming the law-enforcing agencies even where they are to be blamed, will not solve the basic and rudimentary problem as to why communal riots take place.

We had in the above referred chapter pointed out how the canker of communalism had made inroads into the harmony existing between the Hindus and Muslims so much so that each treated the actions of the other with suspicion and doubt. We had in that connection said that the crisis of communalism being one of cultural, religious, social, political and economic maladjustment in our society, it is a matter for the most anxious consideration of all the leaders –

public, religious, social, political, economic and educational – to consider and find a solution to eradicate those conditions. Otherwise it will seriously affect the health of the nation of both Hindus and Muslims and for that matter of all communities. It was, therefore, incumbent on all those in whom the responsibility for the well-being of the nations vested to try and solve it, free of any inhibitions and mistrust, with the realisation that the health of the nation to which they belong must be preserved at all cost. No sacrifice could be considered too high to achieve this end, and the healing of any wounds of partition and purification of the hearts and minds of men is a necessary desideratum laudable to achieve. The alternative, of internecine strife, will have dire effects. If a timely remedy is not found and the communal virus is not obliterated communal tension or polluted communal atmosphere will ultimately affect the youth which will certainly be a dangerous portent. Indeed the evidence before us does indicate that the youth has begun to be affected. We further pointed out that when large sections of community or communities are involved, it is difficult to postulate that the police and ultimately the Border Security Force, the Central Reserve Police or the army, who consist of members of all these communities, will not be so involved though in varying degrees. The policemen, Hindus or Muslims, the ones to be immediately concerned with communal disturbances, also being members of a community and living as a part of it are likely to be susceptible to communal influences in the same way as the rest of these communities, and may thus be affected in the discharge of their duty. It was our view that unless the virus of communalism is eradicated and the society dedicated to a secular life, no amount of police or any other force or the endeavours and findings of Commissions, whether high-powered or not, could radically deal with this problem. It is not a homily we intend to deliver but the distress and anguish we have gone through these eight months of the inquiry, hearing about the terrible things that have happened, the inhumanity, the fury of man killing man with an excuse so flimsy as to make it without any cause, reason or rhyme, have persuaded us to indicate some of the basic needs to reform our society.

After handing over a sealed copy of the report to the Chief Secretary on 21 October 1970 at the airport, I left Ahmedabad for Delhi. After I got back to Delhi the Bench of the Supreme Court was busy hearing the Princes' case, regarding the abolition of the Privy purses payable to the Princes by an ordinance issued by the President of India on the advice of Indira Gandhi's Government. As this was being heard by the entire court, presided over by the

Chief Justice Hidayatullah, I had only admission work. During this period a rumour had been floated that there had been difference of opinion between the members of the commission. One day Justice J C Shah who was next senior to the Chief Justice asked me about it. I told him that our report was unanimous, but he had some doubts. I then told him my colleagues were high-minded people and had fully agreed with me. The conclusions arrived at by all of us were unanimous.

Ultimately the Government of Gujarat agreed to our findings subject to a few comments and issued the report. Soon thereafter the government was superseded by President's rule which after consideration accepted all our recommendations and implemented them. In view of the implementation, there were no communal riots in Ahmedabad or in any place in Gujarat for nearly ten years. It was only with Indira Gandhi's return to power in 1980 consequent on her defeat immediately after the emergency in 1977, that communal riots began to take place again in that state and things were quite disturbed thereafter.

During the time I was engaged in the commission work I was also busy with the invitations of the Advocates' Association, and visits to different places in Gujarat, and Rajasthan, some official, and others, visits to places of importance and interest.

The Advocates' Association of Gujarat invited me to address them in March or April. I chose the subject 'Some Stray Thoughts'. This talk was not only attended by the Advocates but by the Chief Justice Bhagwati, Judges of the High Court, Members of Subordinate and High Judiciary. This address of mine was incidentally published in the *Gujarat Law Journal* 1970 (Vol XI, pages XXV to XXX). The Bar and the Bench appreciated it. In the lecture I dealt with a suggestion in respect of the law's delays which I said was an eternal problem. The major problem is that most delays take place before the case comes up for hearing though in some cases no doubt it is due to adjournments which are asked and granted at the time of hearing. A major part of the duration of the case is spent in reaching the hearing. In respect of this as a thought had struck me, I expressed it, while confessing that I had not given it deep consideration . I requested the members present and others to consider it for what it was worth namely that probably a procedure like section 80 CPC notice against the Government if used in all civil litigation might reduce the actual duration of the case in court.

A person wanting to file a suit may give notice to the defendant in terms of a plaint which he is ultimately going to file and call upon the defendant to satisfy his claim. This will give the defendant the opportunity either of satisfying the claim or coming to terms or in contesting it, in which case he will be required to join issue on all points of controversy. A maximum time could be fixed for this and after waiting for that period, the plaintiff can give him notice of the date on which he will file the suit. After waiting for the expiry of the time or the reply by the defendant contesting the claim, the plaintiff can give further notice of the date on which he will file the suit and the defendant would be required at the latest a week thereafter to enter his appearance. On the date when he is deemed to have entered an appearance, the Court can frame issues on the pleadings already exchanged between the parties, and file the copies of the documents on which he relies. It would be for the plaintiff then to bring his witness or to take out summons to witnesses in the form prevalent and serve it on the witnesses. If the witnesses do not appear then he can move the Court to take proceedings to compel attendance. Similarly, the defendant also can be required to do likewise. The periods of all this would be fixed peremptorily unless the Court for sufficient cause extends the time. In this way, the responsibility for delays would be put squarely on the shoulders of each of the parties exposing them to detriment or some penal action.

In so far as appellate Courts are concerned, delays are mostly in service of summons and the case being ready for being posted for hearing. Here again, some procedure can be devised for which the parties themselves will be responsible to make the record before the appeal is ready and filed in Court. Sometimes, after filing the appeal, delays may take place in legal representative proceedings. Here again, one could examine the possibility of the case being heard without these legal representatives being brought on record because the advocate who files can be treated as representing the legal representatives also, whoever they may be, inasmuch as instructions had already been received, fee already paid, and record completed before filing the appeal, the case could proceed to hearing and after the decree, steps could be taken to bring the legal representatives on record, at any rate before the time of the execution of the decree. I know these suggestions may be liable to a lot of objections — and I do not claim to have worked out all the details or met possible objections but I requested my audience not to allow any such objections as there may be, owing to an entrenched view of the procedure to which we are used. There should be a realisation that the procedure requires to be changed for achieving better results,

which, if realised, will make us willing to undertake reforms in that direction. In this connection, the role of the advocates also has to be reoriented. While the industry, education and experience of the advocates contributed vitally to the quality of the judgments pronounced by the judges, sometimes the help sought to be rendered by the advocates may become unnecessarily prolix and lengthy. Repetitive arguments are often time-consuming rather than contributing to the clarity or presentation or persuasion of the cause. That by and large, the assistance rendered by the members of the profession is invaluable to the Bench can admit of no doubt. Perhaps we could devise some way whereby partly written and partly oral submissions limited to a particular time may be adopted. While the preparation of written submissions may be comprehensive, the oral submission could be concentrated one or two main points upon which the whole case would hinge; not that other points would be considered to be unimportant, but the persuasion by oral argument may be limited to that aspect of the case which the lawyer considers is the foundation of his case. This procedure can be thought of not only for the original trials, but also in higher appellate Courts. The courts are bound to consider all the arguments in the written submissions or, at any rate, show that they have gone through them; but if they do not, that could be made the grounds of appeal. In this way, the subordinate judges also will have to be careful and go through the submission and give every argument the fullest consideration. So far as the junior members of the Bar are concerned, I had dealt with this aspect of the matter also on earlier occasions. The increase in litigation having necessitated the increase in courts, and number of judges, ought to have naturally given an opportunity to the younger men to find work. But, unfortunately, the work has tended to be concentrated in the hands of only a few. The tendency to law's delays continued because the lawyers who have accumulated work cannot be in different courts at the same time and naturally seek adjournments. If adjournments are not given, there is the usual rub between the Bar and the Bench. In the larger interest, therefore, no lawyer should ask for an adjournment on the ground that he has another case elsewhere. Once the case is fixed for hearing, it should never be adjourned except and save for the personal inconvenience of the advocate either illness or some unavoidable domestic necessity. But let this not be considered as conferring a fundamental right. The juniors must always be prepared to carry on the case elsewhere and it is for the seniors to choose which case he will attend personally and which case he will entrust to juniors. In this way, the juniors will also be made to study the case fully. The choice should not be left to the client. The client should not be

allowed to control the case because it is often said that he chooses a particular person and therefore he is entitled to have that person alone to argue his case. The clients must now learn to choose the particular office where he chooses the senior as well as the junior and not complain that professional services which he wanted were not rendered.

About this time I received my first book, an anthology of articles, speeches and essays edited by the Principal of Osmania University Law College, Professor Venkatasubba Rao an erudite scholar, under the title of ***Quest of Justice*** published by the *Madras Law Journal*, Madras with an able introduction by him dated 1 Julyl969. This was in fact my first book, though while practising, I had written a book on *The* Excess *Profits Tax* on the tax introduced by the Nizam's Hyderabad Government in 1942-43.

Professor Venkatasubba Rao has written his commentary on each of the five parts of this book in his introduction which the readers may find of interest. I was grateful to him for taking a great deal of interest and spending his valuable time. As he said while thanking me for permitting him to select from an immense array to put together for conveying a message a few typical specimen 'though wholly inadequate in point of factual coverage of material available'.

There were several reviews of the book in newspapers and journals circulating throughout India. The *All India Reporter* reviewed the book in October 1970 ending with the comment 'The author's experience and attainments are rich and varied. The grand themes which run through these pages in the perennial Quest of Justice and the pivotal role assigned in it to the judge, the lawyer, the administrator and the law teacher. A book that could be read both for pleasure and for profit, says the blurb. That is no exaggeration.'

The *Madras Law Journal* office by their letter dated 22 January 1971 sent me a review of the book which appeared in *Bombay Law Reporter.* (Vol. XXII p.112) The reviewer stated: "This collection displays a catholicity of interest in matters pertaining to law and a deep insight into some of its problems. The lawyer will find here much to interest and instruct him. The book could have done with a shorter and less dithyrambic introduction by the compiler, for witness this: I venture to hope that this introduction might serve as a refreshing medium rendering more refulgent the emergent ways self-luminous philosophy enshrined in the Anthology.'

Among the newspapers, I would like to refer to a few. The *Hindustan Times*

weekly carried a review dated 6 September 1970. Towards the end, the reviewer refers to the last essay being ‘a delightful piece that proves that Dr Reddy’s professional interests have not blunted his wider interests in literature and the arts. He would like lawyers to study literature so that they may become better lawyers. The reviewer then refers to my quotation from *Measure for Measure* Act II Scene 1: ‘The jury passing on the prisoner’s life, may in the sworn twelve have a thief or two guiltier than him they try,’ with the comment, ‘It is a brilliant and thoughtful, and provoking anthology which no lawyer should miss, and which even those who are not lawyers may benefit from.’

There was also a comprehensive review of the book by the Director, Indian Law Institute of Delhi on its publication. Nearer home, the *Deccan Chronicle* in its Magazine section of 17 January 1971 reviewed it under the title ‘How to Avoid Law’s delays.’ When I first met Justice K. K. Mathew, a judge of the Kerala High Court after he was elevated to the Supreme Court, he said I already know you from your book which I read with admiration, interest and appreciation.’ The Saurashtra University by letter of 5 June 1971 wanted to include in their textbook in English the article entitled “The Role of the Judiciary” . While acceding to their request I asked for a copy of the publication in which it was printed. Similarly the *Maharashtra Law Journal* wrote to me on 25 May 1971, that ‘Some members of the Nagpur Bar read *Quest of Justice* and they were so impressed that they have requested us to approach you for permission to reproduce some portions from the book in the *Maharastra Law Journal* and the *Madhya Pradesh Law Journal.’* They particularly asked to reproduce the portion dealing with ‘Law as a Profession’. I accordingly granted them permission and gave a copy of my letter to the *Madras Law Journal*, Madras. All this I felt was a reward for the hard work I did apart from the nearly ten volumes of reported judgments including my Urdu judgments of the Nizam’s High Court (Adalat-e-Alia), got together by law reporters and others who presented them to me.

We dealt with the communal trouble in districts of Gujarat other than in Ahmedabad in Part II of our report from page 233 onwards. At the very beginning we said that on the newspaper reports about the Jagannath incident being circulated in the districts along with persons travelling to the districts from Ahmedabad spreading news about communal trouble, there have been allegations of riots in the districts though not of any intensity; there was unrest in Surat, Broach and Panchmahals but they materially remained unaffected and required no mention by the commission. In the districts of Sabarkantha,

Junagadh and Rajkot, incidents did take place but they were not on a large scale. We only dealt with the situation in the districts of Baroda, Nioda and Mehsana separately. Nonetheless I visited some of these places like Junagadh, Sabarkantha, Rajkot and Somnath, Mount Abu, Ranakpur, the last two both Jain temples, one built with white marble and the other with brown marble. The temple on Mount Abu took our breath away. How marble was brought by the elephants to a height of five to six thousand feet from Makaran down the hill to build the temple is a marvel. The marble was perfectly white and even in summer walking on it with bare feet had a freezing effect on our feet. Junagadh had a historic significance because the Nawab had acceded to Pakistan but the state was taken over by my friend Shiveshwarkar, I.C.S, who had been at Cambridge with me. We were given the Nawab's bedroom and his quarters. The bed had not been cleaned and was full of dust. Sleeping in it gave me and my wife allergic cough. It was known that the Nawab cared more for his large number of dogs than for the affairs of his state. It was even suggested that he had their teeth cleaned with toothbrushes and toothpaste or powder.

The Somnath Temple also had a historical value. The original temple was destroyed by Mahmood of Ghazni who destroyed the idol thinking that the wealth was beneath the idol. Sardar Vallabhbhai Patel after Independence, notwithstanding the opposition by the secularists rebuilt a temple next to the one which was destroyed. Its location in the coastal area is awe-inspiring.

At the invitation of the Rajasthan Government we visited Jaipur, Udaipur, Jodhpur, Chittorgarh and Dilwara temples. Justice Bhagwati asked us to particularly visit Dilwara temple about which there is a great deal of history. It is said that when Aurangzeb was destroying Hindu temples, the devotees of Sri Krishna in the temple at Mathura, carried Sri Krishna's idol and travelled with it a long distance till at last they found a shepherd's hut at Dilwara where they placed it and began to worship. The faith of the people particularly the shepherds was so devoted that at the annual function large quantities of rice would be cooked and whoever visited would have their share in it. At the *arati* the crowd was so restless that anyone in the front had to bear their weight as I and my wife did. I was very much impressed with their devotion. All these places we visited from time to time as and when there were intervals between the sitting and other commissions.

I do not want to lengthen this narration unnecessarily. During the time I was away from the Supreme Court I missed hearing the petition against President

Giri's election and the derecognition of rights, privileges and personal rights of Princes. They were also deprived of their privy purses guaranteed by the constitution by resorting to the device of using a provision meant only for use to derecognise a prince and to recognise another in his place.

In so far as my personal matters were concerned there were three marriages in the family, two in mine, one of my son in Ahmedabad on *Akha Teej* day, 8 May 1974; of my daughter, 13 December 1970 and of my niece – my sister's daughter, Bharathi on 24 April 1970 for which we came to Hyderabad. Apart from this my mother-in-law who was ailing died in September while we were in Ahmedabad. On an urgent message being received we rushed back to Hyderabad. Fortunately, my son, daughter-in-law and my youngest son Gautam who was in India on a research assignment for his Ph.D. degree from Glasgow University were in Hyderabad. We were not present in Delhi at the time when the judgement on the Princes case was pronounced on the 15 December, nor when Hidayatullah retired, the next day, on 16 December. I wanted to be present at the farewell function and wanted to return to Delhi after my daughter's wedding on 13 December, but Huddi very generously insisted that I need not do so. He said 'as far as I am concerned I am not retiring for you. I will be seeing you quite often when I come to Delhi. I don't want you to leave your guests and relatives only to come for my farewell function.' I was greatly moved by his generous gesture. About the judgment in the Princes' case I will write later.

One incident which I would like to record is the problem with which Huddi was confronted. Huddi at a meeting of judges sometime in November told us that there was a likehood of Justice J. C. Shah next in line being superseded, because the government felt that the Supreme Court was not supporting the government's actions. Actually it was a move to supersede a man who the government thought was not their supporter. Huddi told us that he wanted to represent to the government that if this was done all the judges of the court would resign. He asked us for our views. All of us except one person was agreeable and his reason was that he could not afford to resign. I was the youngest of the justices except for Justice Dua who did not have long for his retirement. I said if every one resigns I would also follow. Anyway the news of our views having reached the government they announced Shah's appointment as a Chief Justice as from 17 December 1970 which was followed by the appointment of Justice Sikri from 12 January.1971. All this was because it was said that after the decision in Golaknath's case and the Bank Nationalisation case, the Government of Indira

Gandhi considered these decisions to be retrogressive and the desire evidently was to shape the judiciary to the party's new ideology of what was termed as 'instant socialism' by placing restrictions on the fundamental rights sacredly inserted in Part III of the Constitution. This new ideology seemed to have encouraged the executive thinking of having what may be called a committed judiciary. Till now there were in the apex court judges who exhibited independent thinking and were very sensitive and concerned with safeguarding fundamental rights and the warding off of any attack on their application whenever it was made. After the retirement of the Chief Justice Hidayatullah who was a great jurist, who distinguished himself in many judgements of the Supreme Court, Justice J. C. Shah's appointment was considered equally likely to ensure continuity of the independence of the highest court. Huddi was an erudite judge; his demeanour was polite and temperate; his manner was suave. But his independence was glaring and where a spade had to be called a spade he would do so without fear or hesitation. When the President was advised to issue an ordinance on the Princes case and it was announced overnight, he called it a 'midnight order'. Apart from all this he was the first Chief Justice of India who had adorned the distinguished position of Rashtrapati, as acting President of India in the interregnum preceding the election of Shri V. V. Giri.

Justice Shah had strong views about the recent happenings. The Bar and the public were happy. After the interregnum and suspected delay the government's hesitant decision was highly welcomed. His appointment was commended as his wide legal knowledge, forensic abilities, understanding, and his encouraging manner of the junior lawyers placed him among the great judges of the Supreme Court.

18

Challenges to the Constitution

As I said earlier the marriage of my daughter Urmila was fixed in the second week of November for 13 December 1970. Though it was performed in a hurry, fortunately everything went off well. My son-in-law, P. Narasimha Reddy (Babu) who was working for I.B.M., had to return to the U.S.A. After the marriage the couple went to Madras to get a US visa for my daughter, after which both of them came to Tirupati to which place we also went from Hyderabad along with my son-in-law Babu's parents. After performing *puja* in the temple we came away to Hyderabad. We returned to Delhi after the winter vacation was over. When we were informed that Babu and Urmila would be spending a few days in Delhi before leaving for the U.S.A my wife and I planned to invite our colleagues and friends in Delhi. It was most heartening that all of my colleagues attended the function with their wives, despite the short notice. All our staff including *the jemadars,* peons, drivers, etc. worked hard to make the function a great success. We came to realise that in north India a marriage in the family is considered by all connected with the family as if it was the marriage of their own children.

Just about the time that we returned to Delhi the country was taken by surprise that the President was urged to dissolve the Parliament on 28 December 1970, and hold fresh elections as a result of the decision in the Princes' Case going against Indira Gandhi.

In,the case of *l.C.Golaknath vs. Punjab,* (1967 SCR: 1643) a Bench of eleven judges decided, by a majority of six: Subba Rao CJ., Shah, Sikri, Shelat, Hidayatullah and Vaidyalingam JJ., that while the amending power under Article

368 of the Constitution could not in view of the provisions in Article 13(2) abridge or withdraw or restrict any of the Fundamental Rights in Part III of the Constitution, it could add to or increase its scope. The basis on which this decision was made was that the word 'law' in Article 13(2) included an amendment and could therefore be read as such in the proviso to Article 13(2) which provides that 'the state shall not make any law which takes away or abridges the rights conferred in Part III'.. If so read any amendment under Article 368 made in contravention of that clause shall to the extent of the contravention will be void. Hidayatullah in his concurring judgment had pointed out another distinction between a constituted body and a constituent body as such. For abridging or taking away the fundamental rights the constituent body will have to be convened. He, therefore, held that they are outside the mandatory process of the amendment which seeks to abridge or take away the rights. In 13(2) Fundamental Rights could not be taken away or abridged. Five judges held that Article 13(2) was inapplicable to acts amending the constitution. The very first time this question arose was in the case of *Shankari Parshad vs. Union of India*, (1952, SCR: 89) presided over by Patanjali Shastri CJ. This case was considering the first Amendment Act 1951 in which it was laid down that no provision of the Constitution is immune from constitutional amendment which only provided the procedure laid down in Article 368. If this procedure is complied with, Parliament may by a constitutional Amendment Act, amend even Article 368 itself. The amendments dealing with the provisions relating to property in the fundamental rights were valid notwithstanding that there were provisions relating to their non-abrogation and restriction, etc. This decision it is said made legal the power to establish socialism, etc. The first time a doubt was raised on the power of the Parliament by an amendment to amend provisions in part III was in the case of *Sajjan Singh vs. State of Rajasthan* (1965(1) SCR: 933) presided over by Gajendragadkar CJ. over a bench of five judges. Two of the learned judges, Hidayatullah and Mudholkar JJ. while considering the validity of the 17th Amendment by which it withdrew land held on Ryotwari tenancy from the protection of Articles 14,19 and 31 of the Constitution including such land within the definition of "Estate" in Article 31-A of the Constitution, threw doubts on the reasoning in the Shankari Parshad case. In that case the question whether an amendment of Part III is wholly outside the main limb of Article 368 was not raised by counsel. In spite of this the Chief Justice explored this question and expressed his full concurrence with Shankari Parshad's case (1952 SCR 89). The two judges however havin gregard to the

facts, while considering the validity of the decision in Shankari Parshad's case said that they would have seriously considered whether the matter should not be referred to a larger bench, if the question was raised in the case. But since that question did not arise in Sajjan Singh's case as it had arisen in Shankari Parshad's case, the question of referring the case to a larger bench did not arise. Hence it was pointed out that in Golaknath's case the question arose of the validity of abrogating or amending the Fundamental Rights in Part III. As such the Bench decided that Parliament exercising its power of amendments under Article 368 could not amend the provisions of Part III. This restricted the government's power to deal with the property of citizens and institutions with or without compensation to give effect to its political existence by enforcing a policy of socialism.

In the Princes' case the Government which first brought an Amendment bill to abolish their recognition as well as the payment of their Privy Purses, realising that it was not likely to get sufficient parliamentary support to get it passed as an amendment, abolished both the offices of Princes and their privy purses by an ordinance. As this ordinance was also held to be invalid, Mrs Gandhi in support of her slogan *Garibi Hatao* and her socialist policy, had the Parliament dissolved on 28 December 1970 and held elections in 1971.

I had at that time not followed the various aspects and the reasoning of the majority decision in the Princes' abolition case as I was busy in Ahmedabad, with the communal riots case. I am only giving here the main aspects of it.

In an article written in the *Free Press Journal* on 6 January 1971 Shri S. V. Gupte, former Solicitor General dealt with this matter succinctly. He, however, referred to a somewhat marathon hearing of nineteen days, though not quite as long as the Bank Nationalisation case, and said 'all of which was an appalling waste of time holding up normal business of the Court'. As earlier pointed out, the Government by an executive order sought to derecognise not just a ruler or so as it were but a whole lot of them as recognised earlier by the paramount power. What added piquancy says Gupte was that when the bill for the abolition was presented in the Houses, the Government had sanctimoniously, unable to bear the days of dust (of defeat), sought to avenge itself by taking recourse to the executive order, which it had up its sleeve like a fifth ace and got it signed by the President at about midnight. In that very process, the government laid itself open to the charge not only of acting in an indecent hurry, but of swallowing its pretensions to democratic methods. It was for this reason that Chief Justice

Hidayatullah, as I had earlier referred to, termed the order a ‘midnight order’, like the ‘midnight knock’ which, I understand, upset Mrs Gandhi greatly. In the circumstances the Princes naturally were not slow to challenge the order. Their case was (i) the order of the President was *mala fide* in a legal sense; (ii) the President had no power to pass such an order, that is, it was a nullity, meaning it had no existence in the eye of the law; (iii) that it was bad in any event as it violated the constitutional rights of the rulers as citizens, for it affected their right to privy purses – a right to property – which disappeared with derecognition.

The Government countered this by saying that (i) the petition under Article 32 was not maintainable, for it did not directly or indirectly affect any fundamental right of the princes; (ii) the court had no jurisdiction to scrutinise the legality of the order because of Article 363 of the Constitution which bars any dispute in relation to or arising out of the covenants from the cognisance of the courts; (iii) that the President did not possess the legal power to make the order by virtue of Article 366 (22) of the Constitution; (iv) that the order could be supported as an exercise of the political power which the president enjoyed (so it was said) by virtue of the doctrine of paramountcy which before the constitution was enjoyed and exercised by the British Crown; (v) that the order could be supported as an ‘Act’ of state and (vi) the order was not *mala fide.*

The Supreme Court settled the controversy by a majority of 10:1 on all points except (ii) and (iii). By this time the judgment was not reported so one had to depend entirely on such reports as appeared in the press. On a perusal of these it appeared the Supreme Court held (i) that the petition was maintainable under Art. 32, (ii) the implication was that the order either directly or indirectly affected the fundamental right of property guaranteed by the constitution to the rulers as citizens; (iii) that the court was not barred from determining the question of nullity or the *mala fide* of the President’s order – notwithstanding Article 363 of the Constitution, (iv) that no power to make the order could be spelt out from what was no more than a definition in Article 366, (v) that Government could not invoke the doctrine of paramountcy to support the order because, judged by the constitution, the President had no power, political or other, outside the constitution; (vi) that Article 291 of the Constitution created in favour of the Princes a right to privy purses which could be enforced in a court of law independently of any covenant or covenants so that Article 363 did not bar the jurisdiction of the court; and (vii) the order, though not *mala fide*, was

null.

While the Princes for the time being had won their case, the Government clearly made it a policy issue. It became not only a matter of prestige to win, as its bluff had been called twice. It, therefore, became cautious and wanted to avoid another loss of face.

In order to avoid any such situation the obvious courses open to the Government were (i) to amend the Constitution so as to delete the fundamental right to property; (ii) to delete Article 291 of the Constitution; (iii) to initiate a fresh bill to abolish the Privy purses and privileges.

Shri Gupte's view was that by and large the verdict of the Supreme Court in the Princes' case was unassailable except its interpretation of Article 291, which, it seemed to him, was erroneous. The argument of the Government on the basis of Article 366 (22) was considered in competent legal circles as not even 'statable'. Likewise its arguments about paramountcy and an Act of State were without merit and even desperate. It was axiomatic that there was no such thing as an Act of State where citizens were concerned; the total sovereignty, it seemed to him, now resided in the people of India except to the extent that the people of India had chosen to part with it or delegate it to any particular authority within the framework of the Constitution.

It is true that the people of India had given to themselves the Constitution and set the limits of authority of each limb of the State but had not conferred any political power either on the President or the Parliament. The Executive has always to act within the limits of the legislative power of the State; the Executive may negotiate and enter into political treaties and covenants with other sovereign foreign powers, but what the Executive achieves in that field is nevertheless subject to the veto of Parliament as the representative of the people themselves.

Shri Gupte's conclusion therefore was that it should not be difficult to persuade the Supreme Court to review the decision in Golaknath's case especially in view of a 6:5 verdict. It was not as if the Supreme Court had not recalled its decisions before: indeed it has done so in the Princes' case itself and on numerous other occasions. Shri Gupte thought that Article 291 had been wrongly held to give the Princes an enforceable right to Privy purses independently of the covenants. Privy purses being their property even deletion of Article 291 might amount to violation of the fundamental rights of rulers as citizens. In these circumstances he was of the view that if a reconsideration was called for no Judicial Tribunal

(certainly not the final one in the land) would or should go by any consideration on prestige. This indeed is the attribute of a well trained and respected judiciary.

Before dealing with the Keshavananda Bharati case and its decision on 24 April 19731 would like to mention one interesting event in 1971 as also write about my visit to Scotland in 1972 during the summer vacation and of my meeting Lord Cameron, the head of the Scottish Judiciary, etc. The first event concerns a case of contempt which came before Hegde, Ray JJ. and myself in *Amrik Singh vs The State* (Delhi Administration 1971 3 SCC 215). In this case a criminal miscellaneous transfer petition filed by Amrik Singh was listed before the Bench consisting of Hegde, Ray JJ. and myself in which petitioner raised an objection on 22 March 1971 that Ray J. and myself constituting the Bench were interested in the case and therefore were incompetent to hear his matter. In view of this we directed Amrik Singh who was personally present and had moved the petition to file an affidavit setting out the facts supporting his allegations. This was because on an earlier occasion in another Criminal petition 569 of 68 the petitioner had alleged that Chief Justice Hidayatullah and one other judge namely Amarnath Grover J. were incompetent to hear his transfer application as they were concerned in the case. In view of this Chief Justice, Hidayatullah holding the view that justice should not only be done but must be seen to be done, directed the case to be posted before a Bench consisting of judges about whom the petitioner had no objection.

After this order Ray J. and myself were elevated on 1 August 1967. The petitioner in his petition before us thought that if he objected to Ray J. and myself, there would be no Judge of the Court except Hegde J. to hear the case. But as the rules of the court required at least two Judges to hear any case his case could not be heard in the Supreme Court. In view of this we required him to file the affidavit stating his objections and on the same day namely 22 March 1971 he filed the affidavit. The relevant portion of the affidavit is as follows:

3. That my objection that out of the huge sums involved in these cases especially in the case under FIR No. …. and under sections 120B 409, 420 IPC many items of expenditure had been shown under different heads and payments to different persons for specified purposes clearly shown in the documentary evidence submitted in the said cases including the statements submitted by me under Section 164 Cr PC along with Annexures, etc. etc. before the court of Special Magistrate incharge of these two main cases along with some other proceedings reopened against me by the SPE as mentioned in the above noted orders issued

to the Respondent for producing the original records.

4. That among the aforesaid items of expenditure and payments made to and through many named persons the names of two gentlemen have also been clearly mentioned as Shri A. N. Ray and Shri Jaganmohan Reddy (along with others) (both of whom are now Hon'ble Judges of the Court constituting the Bench hearing the matter) during the period before they were elevated to the Supreme Court Bench.'

The petitioner had also therein mentioned that the allegations made by him were supported by five documents in March 1959, October 1958, receipt for Rs. 50,000 and pro-note for Rs.10,000 forming part of the FIR 5/56 and two orders of the Magistrate dated 2 January, 1961, 25 September 1964 and court orders dated 11 October 1958, in case No.95 of 1958.

As these allegations were vague the petitioner was directed to file a better affidavit setting out full particulars stated in the order of the Bench by 4.30 p.m by 23 March 1971 a day before the order in the contempt case was to be passed. In response to this order the petitioner filed the new affidavit on 23 March 1971. This affidavit was found to be clearly evasive and showed that the petitioner had absolutely no basis to make the reckless allegations that he had made on the day of hearing. We again ascertained the nature of the documents referred to in his affidavit. It was found clearly that none of these documents referred to, had any bearing on the scandalous allegations made against the judges. The petitioner had been contumacious and despite being given repeated opportunities to explain his position or to detract from them and offer apologies in this court, he had not done so. It was a clear case of intimidating judges, magistrates and others of the courts. Finally we said:

'It is not from any exaggerated notion of the dignity of any of us that we are proceeding against the petitioner for contempt of court, but because it is imposed upon this court the duty of preventing *brevi manu* in contempt, to interfere with the administration of justice. The petitioner has been deliberately interfering with the course of justice and for that purpose scandalising the judges. In any case speaking for myself the allegations made in the years mentioned by him, I had not even visited Delhi. I mention this not that it is relevant but only to show the recklessness with which the allegations were made.

The contempt committed by the petitioner is grave and his attitude in the court was contumacious. We sentenced him to simple imprisonment for six months.

Immediately after we passed the order the complainant looked shattered and was apologetic. As directed, the Registrar had issued the necessary warrant and he was taken away to serve his sentence.

It is a matter of interest to know that the petitioner Amrik Singh called himself the General of Chindits, a hostile tribe. After serving three months in jail, his son, an officer in the Indian Air Force appeared before us in his full uniform presenting a petition on behalf of his father expressing regrets and apologising for him. As his father's eyes had to be treated by an eye surgeon he requested that his father might be released. Ray was very adamant and wanted that he should serve his full term but I told Ray that since we had convicted the contemnor and he had served half the sentence our purpose in vindicating justice was achieved. Since the remission was asked on the ground of illness, health, remissness and apology we should accept it. But Ray was still insistent. By a majority Hegde J. and myself, ordered the contemnor to be released.

I refer to this judgment only to show how an audacious litigant made scurrilous, unfounded and reckless allegations against almost all the judges of the Supreme Court except one. Though initially his attempt succeeded, ultimately an end was put to such contumacious behaviour of the petitioner by sentencing him. This would serve as an example to other litigants.

In the law reports of 1971, 1972 and 1973 I was a party in Benches consisting of Sikri CJ., Hegde, Mitter, Ray and myself or Dua and myself or Vaidyalingam and myself, etc., dealing with various matters. I was away in 1970 in Ahmedabad. Except for the Bank Nationalisation case, I had not taken part in any case that year. I do not propose to deal with the cases in which I took part appearing in the law reports unless it has some relevance to some aspect of judicial behaviour, or involves in some way such an aspect.

In the summer vacation of 1972 between May and July my wife and I decided to visit the United Kingdom to see my son Jairamchander and daughter-in-law Surekha, both doctors working in the Princess Margaret Rose Hospital in Edinburgh, where a daughter was born to them on the 11 January 1972. She was our first grandchild and we wanted to see her. Besides this, I was suffering from a stone in my kidney, for which I had earlier visited London to have an operation but was advised against it. I wanted to consult a famous surgeon in urology Professor Sweeny of Newcastle which was on the border of Scotland. When I mentioned our proposed visit to Chief Justice Sikri, he suggested that my wife

and I should call on Lord Cameron the Head of the Scottish judiciary and his wife. He would write to him of our visit and he requested us to call on them. We said we would consider it a privilege to have the opportunity to meet them.

After we had decided on the trip, we went to Hyderabad before leaving for Edinburgh. When our friend, Dr Helen Haldane came to know of our visit she requested us to take a baby tortoise to a colleague of hers who was a Professor of Genetics in London. We could not say no when Helen herself, the wife of J.B.S. Haldane the great geneticist, and who as Helen Spurway was pursuing research in the same field, made this request, particularly when she said she would inform the Professor in London to receive us at London Airport. In fact we were changing planes in London for Edinburgh, so we accepted her request to take the baby tortoise. Fortunately we had earlier written to our friends Professor Smith and his wife. They had visited us on the invitation of the Indian Statistical Institute, Calcutta to take part in research in palaeontology on the discovery of fossils of dinosaurs in Sironcha in the then Bombay state, which was on the border of Andhra Pradesh at Chennore, Adilabad district where we had our lands.

When we boarded the plane of British Overseas Air Corporation at Delhi, the Customs officers did not object to our taking the tortoise with us as long as the British Customs did not have any objection. I told them that since a professor was coming to receive it at London, and it was needed for his research he would be getting the necessary permit. Throughout our journey to London my wife looked after the little tortoise. It moved about and its excretory processes gave her trouble. She had to keep it clean. When we reached London the customs officer asked us if we had any thing to declare. We said we had none except a baby tortoise sent by the famous scientist Helen Haldane to a Professor of the University in London who would be waiting for us outside the Customs. As soon as we mentioned the tortoise the customs officer uttered: ‘Tortoise! where is it?’ We gave him the bag in which it was. He took the bag and disappeared. After about ten minutes he came back and said a permit from the external affairs ministry to import it was required. I said perhaps the Professor who was waiting for us may have got it so could I be permitted to go out and contact him. He allowed me to go out. I met Dr and Mrs Smith but there was no Professor and none was available in spite of our having him paged by the announcer. We were in trouble. I told the customs officer they could do whatever they wished with the tortoise. At this juncture Mrs Smith had a bright idea. She told the Customs

officers that she and her husband would undertake to get the permit from the Zoological department to keep it in the Zoology garden at London and that we could be permitted to emplane at another airport from where the plane to Edinburgh took off. In this way we were released and thanks to BOAC's arranging for a Rolls Royce to take us to the other airport which was fifty miles away we were just in time to take off for Edinburgh.

We reached at about 11.00 p.m. Jairam met us and took us home. As soon as we got there we went to see our granddaughter, Divya, who was sleeping. The next morning when we saw her, she appeared smart and very active. I spoke to Lord Cameron and my wife and I went to see him and Lady Cameron in the evening in their flat. They led a life of simplicity which impressed me. We spent an hour or so talking about various matters and at about 7.30 p.m. suddenly Lord Cameron said he would be happy if we could dine with them in a nice French restaurant which they knew. We said our son and daughter-in-law would be expecting us but Lord Cameron said I could phone them and say we would be going to dinner, and after dinner they would take us home in their car. Accordingly we informed Jairam and Surekha. After this he phoned the restaurant to reserve a table for the four of us. Lord Cameron then drove us in his Rolls Royce car. We had a very pleasant evening with them and after that he drove us to Jairam's house and left us. Both of us thanked the Camerons for their warm hospitality.

I was invited to visit the Court and sit on the Bench over which he would be presiding. I did so. I noticed that he and his colleague in their court robes sat quite far from each other. I was made to sit next to Lord Cameron. As soon as the court started Lord Cameron introduced me to the Bar as a judge of the Supreme Court of India. The senior members of the Bar welcomed me. During the mid-day break which evidently they have for fifteen or twenty minutes before they take up regular matters, all the judges and lawyers come into a very big hall and would talk to one another. This and the practice of a junior judge on the bench, leaving his seat and going to another if he wanted to consult him struck me as unusual.

We also visited along with Jairam and Surekha, Lady Mitchison, wife of Lord Mitchison, a Minister in the Labour Cabinet and sister of Mr Haldane the geneticist. We had a glimpse of their lovely house and were greatly impressed by her kind hospitality. Lady Mitchison herself did the cooking. This visit was quite an experience.

Jairam and Surekha along with Divya also took us to Loch Ness which at that time was very famous, as it was believed that a monster lived in the lake. There was of course no evidence during our visit of any such monster living in the lake! On the invitation of Jairam's doctor friend we also visited the Edinburgh Castle for the festival, to see the parade and witness the band of Scottish bagpipers playing in their Highlander's dress. It was a grand performance. After this another friend invited us to his country house which was also very pleasant.

As for my operation for the stone in my kidney, I had a check-up in the hospital. The specialist took X-ray photographs of the kidney after giving me an injection of a dye. We took these X-ray test reports to Newcastle and consulted Professor Sweeny who after careful scrutiny and examination said that there was a stone in the upper calyx of the left kidney, but that it was in a safe place. There was no danger of its moving and causing pain. In his view no operation was necessary. After this we returned to Edinburgh.

My youngest son Gautam was doing his Ph.D in Economics in Glasgow which was about an hour's journey by car fom Edinburgh. We went to see him and Dr Radha Raman Sinha, his supervisor. We also met the professor and head of his department. Gautam was doing well and had created a good impression about his work. We returned to Edinburgh. Jairam had ordered a car and had to go to London to get it. We went along with him in the train and returned in the new car of which he took delivery and which he was planning to bring back to India. We had a good time on our visit to London though only for a day and night. We did some shopping, etc. The next morning we left for Edinburgh. About this time my son, Ajith and his wife Diana had also come from Chicago to visit us. Ajith changed his mind and instead of returning to Chicago planned to come to India to spend some time with us. We were happy that he did so. We had a very good time and after spending our vacation happily we returned to Delhi in time for the opening of the court.

As I said earlier, Indira Gandhi had assumed leadership after the split in the Congress, which was governing with the help of other parties. In view of the obstruction to her slogan of *Garibi Hatao* by the decisions of the court in the Bank Nationalisation and the Princes cases, she decided to call for a general election earlier than the expiry of the tenure of the Parliament. The election results in March 1971 were a walkover for her. The overwhelming strength given to the Prime Minister by the electorate appeared wholly one-sided and her image had gone up high. The slogan against her by the opposition that

democracy was in danger was set at rest and Mrs Gandhi was vested with the responsibility to govern the country wisely and well.

After the elections Mrs Gandhi appointed Shri Gokhale, a former judge of the Bombay High Court, who had resigned because of economic reasons, as Law Minister. Shri Mohan Kumaramangalam, a barrister who had been a colleague of mine at Cambridge, and who was a member of the Communist Party of India, was appointed Minister of Steel. Gokhale, Mohan and Siddhartha Shankar Ray, also a barrister, who was the Chief Minister of West Bengal, were entrusted with problems arising out of the Supreme Court's decisions. They set out to advise the Prime Minister to introduce constitutional amendments so as to vest the executive with full powers by overruling Golaknath's case and to appoint judges who were committed to a policy as highlighted in the Parliament during the debate on this aspect. I will refer later to Mrs Gandhi's reply to a letter of Chief Justice Sikri taking exception to the enunciation of such views in Parliament.

The newly elected Parliament which gave ample strength to Indira Gandhi first enacted the 24th Amendment Act 1971 by and under which Article 368 was amended. Firstly, the marginal note of Article 368 was amended from 'Procedure for amendment to the constitution' to 'Power of Parliament to amend the Constitution and procedure therefor'. After that the following sub-clause was inserted in Article 368.

'(1) Notwithstanding anything in this Constitution Parliament may, in the exercise of its Constituent Power, amend by way of addition, variation or repeal, any provision of the Constitution in accordance with the procedure laid down in the Article.' The original Article was renumbered as sub-clause (2) and the only change which was made in that clause was to substitute for the words 'it shall be presented to the President for his assent and upon his assent being given to the Bill', the words 'it shall be presented to the President who shall give his assent to the Bill thereupon". A third clause (3) was added namely '(3) Nothing in Article 13 shall apply to any amendment made under this Article'.

The 25th Amendment Act, 1972, the 26th Amendment Act, 1972 and 29th Amendment Act, 1972 were all passed expressly to displace the reasoning on which the majority judgment in the Golaknath case and the Princes' case and the Kerala High Court judgments were based. The insertion of sub-clause (3) in Article 368 was made to nullify Wanchoo J.'s observation that under Article 368 'the President could refuse to give his assent'. The context of the 24th, 26th and

29th Amendments were with reference to the right to property. The 25th Amendment Act amended Article 31 by adding Article 31C. The 26th Amendment Act abolished Privy Purses and the status of native rulers. The 29th Amendment added two Kerala Acts to Schedule 9 of the Constitution so that no amendment inserted therein could be challenged in any court. It was well conceived that most of those Amendments would be challenged in the Supreme Court as indeed they were. In order to protect them from any adverse decision against the policy of the Prime Minister and her Cabinet, it appears that it concentrated on the appointment of committed judges to the Supreme Court. A cursory narration is given here of these attempts made before the *locus classicus*, the Keshavananda Bharati case which was referred to the whole court of thirteen judges having regard to its great importance. The case began to be heard from November 1972. I shall later deal with the hearing, its ultimate decision followed by the supersession of three senior judges in favour of the fourth judge whose decision was in favour of the Government, for appointment as the Chief Justice, which had no precedent. In so far as the selection of judges and their appointments before the hearing of the above case is concerned I will give a brief narration which will indicate the alleged attempt mentioned above.

While I was on summer vacation in Hyderabad in July 1971 I read in the papers about the appointment of S. C. Roy as a Judge of the Supreme Court. I wondered who he was. He was sworn in on 19 July 1971. As soon as I went to Delhi on the weekend before the commencement of the session I was surprised to get a telephone call from Subimal my old friend from London, whom I had also met in November 1953 in Calcutta where he was practising as a barrister of the Calcutta High Court. I could not connect Subimal Chander Roy with S. C. Roy. Subimal was the nephew of the Chief Minister of Bengal Dr B. C. Roy. Evidently, Subimal's name had been suggested at the instance of Siddhartha Shankar Ray, the then Chief Minister of Bengal. At that time Subimal had a large practice and a good reputation. The first person who was appointed directly from the Bar as a judge of the Supreme Court, was Sikri. Subimal was the second person. After he had been sworn in as a judge he had been enquiring when I would be returning to Delhi. As soon as I arrived he phoned me and came over to see me. His narration of how he was chosen makes interesting reading.

Ever since the Bank Nationalisation judgment and the judgment in the Princes' case, Indira Gandhi had on the advice of the famous triumvirate H. R. Gokhale,

Law Minister, Siddhartha Shankar Ray, Chief Minister of Bengal, and Mohan Kumaramangalam, Minister for Steel, begun to choose judges likely to support her and her Government. In this attempt to control the independence of the judiciary Subimal was invited by Gokhale, Law Minister at the instance of Siddhartha Shankar Ray to come over from Calcutta to see him. When he did so, Subimal said he found that two others, Siddhartha Shankar Ray and Mohan Kumaramangalam were also present. The three of them talked to him on various matters, to ascertain his views. After this the three of them went to another part of the room and began to discuss something among themselves, at times pointing towards Subimal as if they were discussing him. After this Gokhale asked Subimal to join him at a dinner in the evening to which he had also invited Sikri, the Chief Justice. When he went back to Calcutta his wife asked him, 'Well has the bride-groom been approved?' Along with him another judge, D. S. Palekar of the Bombay High Court whom Gokhale knew very well was also appointed. Subimal was a little worried because from the next day's cause list it appeared he was sitting in a Bench dealing with criminal cases. As he had not handled any criminal case earlier, he was nervous. I told him there was nothing to worry about. As far as criminal law was concerned, there were two and a half Acts: the Penal Code, the Criminal Procedure Code and part of the Evidence Act. I assured him that if he had any problem he was always free to discuss the matter with me. He was evidently reassured.

The next appointment after Subimal and Palekar was that of H.R.Khanna from the Punjab High Court. He was sworn in on 22 September 1971. It would appear, and there was talk to the effect that Subimal was Siddhartha Shankar's choice, Palekar was Gokhale's and Khanna, Sikri's. Mohan Kumaramangalam's choice was said to be Mathew from the Kerala High Court. He was sworn in on 4 October 1971. It was unfortunate that Subimal was suffering from some kidney problem. None of us knew about it. His wife Archana could not stay with him as her daughters had exams in Calcutta and she could not leave them and come to Delhi. Subimal died on 12 November 1971 nearly four months after he was sworn in. To me it was a great loss. My wife and I have kept in touch with Archana and her family to this day. We had always considered ourselves to be members of one family.

In the appointments of that time, I was only consulted by Sikri about one judge, Hameedullah Baig, who was my schoolmate and a colleague at Cambridge. I said I knew him and his family well. He was a person of integrity and could be

considered. One day Sikri, who had attended an international judicial conference at which Hameedullah Baig seems to have spoken, came back and told me that he could not consider him as he seemed to have a peculiar outlook and views. Nonetheless, Sikri's opinion was evidently not accepted as it was said the Prime Minister had insisted on Hameedullah Baig's appointment and he was therefore appointed.

About this time in the newly elected Parliament in which Mrs Gandhi had a predominant majority, some of her ministers severely criticised the Supreme Court and its judgments on which Indira Gandhi had depended for initiating her *Garibi Hatao* and socialistic policies. Chief Justice Sikri took exception to such criticism and wrote a letter to Mrs Gandhi on 3 December 1971 which she replied by her letter of 18 December, 1971. I reproduce this letter verbatim so that readers may know how the complaint was dealt with and whether subsequent actions were in conformity or otherwise with the protestations conveyed by the letter.

Indira Gandhi's letter to the Chief Justice

December 18,1971

Dear Chief Justice,

I have your letter of December 3, 1971. As you know I was away on that date. You are also aware of the events which took place which kept us all so fully occupied. I am, therefore, taking the earliest opportunity to write to you.

I am glad that you wrote to me because it enables me to clear some of the apprehensions which you have expressed. Your brother judges and you have taken exception to some observations made by the Minister of Law and Justice in the course of the cut and thrust of a debate in Parliament. You know him well. You also know my other cabinet colleagues Shri Mohan Kumaramangalam and Shri Siddhartha Shankar Ray. They have all been brought up to respect the Judiciary. You need have no doubt whatever that the government and the country as a whole will always uphold the dignity of the courts including the highest court in our land.

Our country is going through profound social, political and economic transformation. Such transformation took place in Europe and America through violence, revolutions and upheavals. In India we are trying to achieve the same results by arguments. Therefore there are bound to be moments of conflict

between Parliament and Judiciary or the Judiciary and the Executive. These are inherent in any living and evolving society.

I do not have to recall the moments of such conflict in the United States and Britain. Despite these conflicts institutions have grown and taken deep roots. We can derive some satisfaction from the fact that for nearly a quarter of a century we have avoided excesses and have resolved differences arising out of the divergent visions of the Law and the Justice without undermining their dignity and prestige.

I remember Bentham's wise remarks that when the Judge had made his decision he was "given over to criticism". As you know most of the constitutional amendments putting a particular interpretation on certain Articles of the Constitution. Inevitably the merits or otherwise of such judgments have been debated at length during the passage of successive constitution amendment bills This in itself is a measure of the high regard of Parliament and the Government for the Judiciary.

I hope that you and your brother judges will see the conflict of arguments, debates, discussions in Parliament in a wider context and not as (in) any adverse conclusions.

So far as I can make out, Ministers participating in the debate did not say anything which had not already been said on many earlier occasions in Parliament. In the course of the debate on the Fourth Constitution Amendment one of your own distinguished colleagues Shri Justice Hegde when he was a member of Parliament made certain observations, without, I am sure intending to affect the prestige and authority of the Supreme Court. The portion referred to by you was in fact a quotation from this speech.

I personally have no doubt what-so-ever that as our nation moves forward and our society gains inner cohesion and sense of direction all our great institutions, Parliament, Judiciary and Executive, will reflect the organic unity of our society. Legal stability depends as much upon the Power to look forward for necessary adjustment and adaptation as to look backward for certainty. We have all to guard against the danger of substituting those inarticulate major premises of social and economic thinking of which we as individuals might happen to approve at a given time for the will of the people as reflected in Parliament. The needs and grievances of the people m a Democracy cannot be met by repression of their manifestations but by remedying the causes which underlie them.

I should like to reassure you and your brother judges of our abiding respect for the courts and their vital role. Their nation expects them to maintain their high tradition of impartiality and to act according to their rights, without fear or favour. If there are ever any moments when you feel like writing to me, please do not hesitate to do so.

With regards,

Yours sincerely,

Sd/-

(Indira Gandhi)

Hon'ble Shri S. M. Sikri
Chief Justice of India
5, Hastings Road,
New Delhi.

In 1972, three more judges were appointed, two on 14 August 1972 and one on 28 August 1972. S. N. Dwivedi of the Allahabad High Court was appointed on 14 August 1972. Baig knew him as his colleague. Dwivedi and Haimavati Nandan Bahuguna, a Minister in Indira Gandhi's government, were related through the marriage of their son and daughter, respectively. Justice Arun Kumar Mukherjee of the Calcutta High Court was also sworn in on the same day, i.e., 14 August 1972. He was recommended by Sri Siddhartha Shankar Ray. Arun was in the I.C.S. He was the Secretary to the Lord Radcliffe Commission which recommended the partition of Bengal as part of the partition of India by creating Pakistan. After this he resigned, went to England and joined the Bar in 1951. He was appointed to the Calcutta High Court where he served frrom 1962 to 1972. He and his wife Geeta became our close family friends. Arun was a brilliant student, an outstanding member of the Indian Civil Service, a successful lawyer and only after eleven years at the Bar was elevated as a High Court judge. Apart from these achievements he had other merits as an educationist. He served on many commissions. The third judge was Y.V. Chandra- chud. He was a judge of the Bombay High Court elevated to the Supreme Court on 28 August 1972. Before elevation to the bench he had earned a very good reputation as an advocate and Public Prosecutor. There was however a grouse entertained by a Chief Justice of a High Court who, though junior, thought he should have been considered by reason of the office held by him. His attempts did not succeed.

It is not necessary at this stage to speak about the considerations which appear to have induced these appointments. Here I am reminded of the wise observation made by the Italian author Ms Oriana Fallaci in her book *Man* that ‘you do not know a person unless you touch him with power’. It is in this light each one of these judges will have to be judged as to what type of ‘committed’ judges they were. There is no point in saying they were committed to the Constitution as observed by Indira Gandhi, Gokhale, Kumaramangalam and Siddhartha Shankar Ray. For before assuming office every judge has to swear that he ‘will bear true faith and allegiance to the Constitution of India as by law established and that he will uphold the Constitution and the laws’.

In the 1972 Vol II SCC (Journal Section page 19) the Honorary Editor while offering congratulations on the appointment of three judges, Dwivedi, Mukherjee and Chandrachud JJ. observed, ‘There has been of late much discussion as to the need for curbing judicial power.’

While referring to the silver jubilee year of Independence the Editor said ‘it is of the utmost necessity that the constitutional intendment as to the three powers, the Executive, the Legislature and the Judiciary must be upheld in the interest of the nation’s future’. The editor had also envisaged that ‘momentous decisions are awaited from the Supreme Court vis-a-vis judicial power and the limits of the legislative power’ and that ‘the nation looks forward to the Supreme Court to adjudge in these regards in all sanctity and constitutional properties

In the end the Editor said: ‘We are sure that the Supreme Court as now fully constituted will uphold the constitutional provisions adumbrated in the national document of 1950.’

The above observations of the Editor almost conveyed that the apprehension of those who were concerned with the judiciary and the manner in which the executive gave indications of its attitude to the exercise of judicial power were a forecast of coming events.

19

The Keshavananda Bharati Case

The editorial note in the report of this *locus classicus* Supreme Court case *Keshavananda Bharati vs. State of Kerala* (1973, 4 SCC: 225) states: 'Though the main question has been the nature, extent and scope of the amending power, it has been discussed in the background of the scheme of the Constitution by application of principles of constitutional interpretation.' Apart from this and other legal aspects laid down in the case, there are also involved political motives, manoeuvres and subtle attempts at interference with judicial independence. There are eleven judgments, which put together run into 703 pages (pages 305 to 1006). The eminent advocates who were appearing represented not only the four petitioners and their respective respondents but also all the states, which were likely to be affected by the decision. The eleven judgments are of (1) Sikri CJ., (2) Shelat and Grover JJ., (3) Hegde and Mukherjea JJ., (4) Ray J., (5) Myself (6) Palekar J., (7) Khanna J., (8) Mathew J., (9) Baig J., (10) Dwivedi J., (11) Chandrachud J. The head note itself in the report is compendious and runs into 85 pages (pages 225 to 306). The case was heard from 31 October 1972 to 23 March 1973. The arguments extended over 66 days and with the pronouncement of the judgment of the eleven judges on 24 April was about 67 days.

The *ratio* of the case decided on 24 April 1973 is still in force today after a quarter of a century and has been confirmed in many important cases up to now. An attempt no doubt was made to have it overruled by a larger Bench during the Emergency. Not only did this fail but the decision has in fact been confirmed by several other important cases in which some of the judges who formed the razor

edge minority have also accepted it. Apart from these, persons of eminence — N. A. Palkhivala, H. M. Seervai, the Advocate General of Maharashtra, Niren De, Attorney General of India and other eminent Advocate Generals of the states, C. K. Daphtary, Senior Advocate and former Attorney General of India, M. C. Chagla, former Chief Justice of Bombay and others appeared. Shri H. M. Seervai, an erudite scholar and author of the classic book on the Constitution, has also later changed his views. The decision in this case unfortunately so embarrassed and apparently affected the prestige of Indira Gandhi and her Cabinet that they acted like the cat in the Urdu saying, "Khisiana Billi Khamba Nocha" (A disappointed cat failing to catch a mouse, tried to save its prestige by scratching a pole to show that it was still the master), by superseding three eminent judges to make the fourth judge, who in all important cases like the Bank Nationalisation Case, the Princes' case and this case had consistently held in favour of the Government, the Chief Justice. It may be stated that when Indira Gandhi had earlier in 1970 wanted to supersede Shah J. on the retirement of Hidayatullah CJ., the Chief Justice proposed at the judges' meeting to inform the Government that if that was done all the judges of the Supreme Court would resign. All the judges except one agreed. Perhaps the government coming to know that the decision to resign was almost unanimous thought it better to appoint Shah as Chief Justice even though it was only for 36 days from 17 December 1970 to 21 January 1971, in the political situation then existing. Following this Sikri J., was appointed as Chief Justice. Elections which were to be held by this time had not yet been held. The supersession and appointment of Ray as CJ. however created a wide disturbance among the public, the members of the Bar, and the opposition parties.

In so far as the hearing of the case was concerned, from the day the case began on 31 October 1972 and before it had even progressed a week, it became clear that there was a sharp cleavage between the two points of view: one, that the word 'amendment' had a limited scope, that there were implied limitations, that the essential features and the basic structure could not be altered and the other that it was wide in interpretation, and the sky was the limit. While the Chief Justice (Sikri), Hegde and Grover were constantly asking questions, and letting fall suggestions in support of the first view, and gave extreme examples, Ray, Palekar, Mathew and Dwivedi were countering these suggestions and asking Palkhivala where he had got implied limitations, essential features and basic structure from. This process continued for 32 days, and we were presented with Conrad and his views, the Irish case, the Ceylonese cases, Australian and

American cases, all of which were cited at length. The debate showed a sharp division which appeared irreconcileable. I got the impression throughout that minds were closed and views were predetermined. Khanna was fond of citing clichés from Holmes, Frankfurter, Learned Hand and others. Palekar's forte was Constitutions. Dwivedi referred to Abbe Sayes and Haig's sheet anchor was Dicy and Ernest Baker. There was one occasion when Dwivedi made a startling proposal to Palkhivala. He said if he (Palkhivala) agreed to property rights being taken away, he (Dwivedi) would get Parliament to declare that other fundamental rights would not be taken away. Palkhivala replied: 'Have I referred so far at any time to property rights? I was dealing with the implied limitations and natural rights, etc.' How a judge could give such an assurance as Dwivedi offered and what authority he had to do so passed everyone's comprehension. Dwivedi rang me up at about 9.30 p.m. and said that he had been indiscreet and ought not to have made that remark. I said probably what he had meant to say was that if Parliament declared that fundamental rights other than property were not amendable, would that satisfy Palkhivala? He said that was what he wanted to say. He was keen that Ray and I should not misunderstand him, though he said he did not bother about the opinion of his other colleagues regarding what he had said. I told him now there was nothing that he could do, but it was well to remember that it was always better to say as little as possible otherwise it would be construed as expression of views. If one had to say anything it should only be to elucidate the point that was being urged. I also told him that this was what I had been following throughout my judicial career. We must not only be objective but give the impression that our minds are not closed. He agreed. Ray told me next day that Dwivedi had spoken to him also on the phone about the matter. As pointed out earlier, Dwivedi's daughter was married to the son of Bahuguna, Central Minister for Communications. His appointment was insisted upon by the Government as a political manoeuvre. Chief Justice Sikri told me a few days after he retired that he had opposed Dwivedi's appointment because he was at one time said to be a card-carrying member of the Communist Party, that he was a comparatively junior judge in the Allahabad High Court and had not made any mark as a judge. But the Government had insisted on his being appointed before any other person's name was even considered. He then thought that as a counterbalance for Dwivedi's appointment, he would on the advice of Siddhartha Shankar Ray and Gokhale propose Arun Kumar Mukherjee and Chandrachud as judges. The government while agreeing to these names insisted that Dwivedi should be appointed first. I know that Siddhartha Shankar Ray had

informed him that the Prime Minister and some of her ministers were against the insertion of Article 31-C but the communists were insisting on it and its validity. This talk evidently impressed Sikri. When Arun Kumar Mukherjee's name was suggested to him by Siddhartha Shankar Ray, he thought Mukherjee's appointment would act as a counter to Dwivedi. Here he was right. Gokhale, it appears, suggested Chandrachud's name and Shelat backed him and here again the Chief Justice was influenced in his view that he may also act as a counter to Dwivedi. Hidayatullah and others told me that Dwivedi had made a speech in reply to the farewell given to him at Allahabad that he was going to the Supreme Court to see that the Golaknath case was overruled. I have been wanting to get at the report of that speech but I could not get hold of it. I understand it was subsequently suppressed. Hidayatullah however said that the Advocate General of Uttar Pradesh, though a Congress nominee, informed him about it and said that when he who was present heard Dwivedi speak in that tenor, he was shocked at the brazenness with which the Supreme Court judge-designate gave out his committed and predetermined views and the purpose of his mission. Of this he certainly gave ample proof not only in his question to Palkhivala referred to above, but also during the course of the long drawn out arguments and subsequently during the period when judgments were under preparation about which I will have occasion to refer at the appropriate place.

During the arguments in the case, Ray and Hegde had a tiff. On the day Seervai was arguing, Ray would interpose whenever the Chief Justice asked a question and once or twice he said to Seervai, 'You go on as you want', which was taken by Hegde as a rebuff to the Chief Justice. Some felt that. That was not the correct conduct for a colleague to demonstrate. When Hegde asked a question, immediately Ray suggested a reply. Hegde then said to Seervai that the difficulty was that his questions were being answered by his brothers while he wanted a reply from Seervai and that he should address his arguments not only to those who agreed with him but also to those who did not. On this, Ray said to Hegde, it was most improper of him to have said what he had. We knew something was going on between them on the bench but did not know what it was. Later I came to know of what was said. Ray was distressed and ever since then was sullen and bitter. He told me in our walks that he had never had such an experience. It was true that Hegde himself had been indulging in answering questions addressed by his colleagues to counsel. To complain of one lapse by Ray was unfair, discourteous and lacking in judicial propriety. This had been Hegde's habit even in ordinary cases when he found that a question indicated an opposite view to the

one held by him. It was sometimes very annoying and one had to assert oneself so as not to let counsel and parties get the impression that his colleagues were overawed. Though Ray was initially at fault, Hegde's remark was like the proverbial pot calling the kettle black. In the highest court of the land one expects judges to conduct the debate in a calm atmosphere and in a detached and objective manner to elucidate the ambit of the argument, by testing the strength of the propositions which are sought to be established. The arguments before the largest Bench were unfortunately not controlled by the Chief Justice, nor did he from time to time ascertain the thinking of his colleagues to narrow down the issues, nor were redundant and repetitive arguments stopped. When Ray suggested after we assembled in CJ's room before going on to the bench that we should control this debate as Palkhivala was repeating himself, Chief Justice, Shelat and Hegde said there was no repetition at all. It appeared to some of our colleagues and the Chief Justice that Palkhivala's object was to address us and through us the public, whose opinion he wanted to canvass in favour of his arguments. If what he said while he addressed us was reported in the press it was not the fault of the advocate. Whatever his purpose, the public would also be made aware of the vital issues which confront the nation. One of the tendencies which I noticed in Palkhivala was that he was in the habit of answering with enthusiasm anything which fell from Chief Justice, Hegde and Grover and with some difference to the questions of Ray, Mathew, Palekar and Khanna. Palkhivala however often ignored questions from Dwivedi and Baig who he assumed had already formed their opinions, because more often theirs were not questions but dissertations. Mukherjee hardly ever said anything but when he did during Seervai's arguments, the implications of the questions posed by him were very significant and it took Seervai quite some time to formulate his answer, which when he did hardly touched the fringe of it. Chandrachud and I were frugal in our questions.

Seervai was most courteous and his court manners were unexceptionable except when it came to views held by the Court being contrary to the views expressed by him in his book on the Constitution. Once or twice the Attorney General, who was most arrogant and rude, suggested though not in so many words that the Court's future would be at stake. He said at one stage that the consequences have to be borne if the decision went against the government. This, I felt, was an attempt to browbeat us. The impression one gathered during the arguments can never really be conveyed by the words used because of the manner of saying it, the tone adopted, the emphasis placed and the menacing nature of the

insinuations hurled at the Bench. Some of the senior judges reacted by conveying their displeasure. Nor was one of the lawyers, Garg, free from such an exercise. On one occasion both Chandrachud and Hegde gave him a good wigging for insinuating that what he was submitting was against Hegde's views. The attacks on the Court were often vicious and showed the venom and pique which these persons had against it. Even the Attorney General was no exception. (I will refer to this later.) This may be due to the fact that Gokhale was planning to oust Niren De and even though he was subjected to so many humiliations Niren De continued. He had gone to Hidayatullah asking him to save him. Gokhale brought Seervai who only accepted on condition that he would begin on behalf of the respondents and Niren De would come after him. Ray and I, however, protested. We said the Attorney General had precedence and he should begin and pointed out that the Chief Justice, Shelat and Hegde in the Bank Nationalisation case had said that this reversal of order could not be allowed. In any case Chief Justice Sikri later said it is for both Seervai and De to settle the issue and if De permitted, Seervai could start first. This, of course, was right but evidently by then at the instance of Gokhale, De was asked to give way to Seervai. I understand on authentic information that De had gone to the Prime Minister and complained.

She asked him to come and see her again and when he did she told him, there was nothing she could do because she was dependent on the advice of the legal members of her Cabinet. De quietly lumped this insult and later tried to make a virtue of it. Talking to me Niren De said he did not want to create trouble in Court and even suggested why the Court was not stopping Seervai's meandering arguments.

During the hearing of the case and when it was coming to a close, I, one day, sent some grapes which I received from Hyderabad to Sikri and other brother judges. Sikri rang me up and while thanking me he asked me what was I doing the next day Sunday. I said, nothing. He asked me if I would like to come to a conference of judges at his house to discuss the case. I said, of course, it was my duty to do so. Next day in my walk with Ray I asked him whether he was coming to the judges' meeting. I was surprised when he said he had not been asked. I told him perhaps Sikri was planning to invite him. When we met in Sikri's house that day at about 10.30 a.m. I found we were only eight of us there: Sikri, Shelat, Hegde, Grover, myself, Khanna, Mukherjee and Chandrachud. I asked Sikri why the others were not called. He said he knew their views but not

ours; that was why he had called us. I made it clear that I felt that was not proper. Sikri's explanation was that whenever he called all of us together it was a cacophony of noise and sterile talk. I did not remember being invited to such a meeting. In any case he said during the hearing of the case he came to know the views of individual judges who were frequently expressing their comments from the Bench. At any rate I was not too vocal as I wanted very much to follow the arguments. On one occasion when I put a question to Niren De to elucidate his submissions it was Hegde, as was his habit, who answered it. I was upset at this. I then said to Niren De, 'Mr Attorney General, is it not strange that I have been listening to all the arguments and submissions during all these days without in any way disturbing any of you so far, and when I ask a question it is being answered by my brother? I want your answer and not my brother's. After we adjourned for lunch, Hegde came to me and apologised. I told him: 'Brother I don't carry my comments from the Bench to my chambers. What I have to say, I say there and then. There ends the matter.' Anyway at that meeting in Sikri's house each of my colleagues gave their views including Chandrachud. All their views were more or less unanimous. When I was asked I said I had not yet made up my mind though in respect of Golaknath's case I was for overruling it. In so far as the other matters regarding implied limitation, basic structure, essential features etc., were concerned I said I was still considering and struggling to arrive at a conclusion. Sikri's draft judgment was ready for consideration before he left for London in 1973 for 16 days to attend to a long-pending engagement. The judgments of Shelat and Grover, Hegde and Mukherjea were also ready. Khanna showed me his draft before he circulated it. After going through it I pointed out the incongruity of singling out the fundamental right to property under Article 32, as not being one of the essential features. Khanna was not prepared to argue it out but said: 'Leave it there, I will be considering that aspect. I am only showing it to you; when I finalise it, I will circulate it.'

Evidently it became known to Baig and Dwivedi that I had not formed my views in respect of the limitation on the amending powers, so both of them, sometimes together and sometimes separately, would be coming to me to convince me that the amending power is unlimited and that there is no justification for the view that the amending provision cannot amend the basic structure or essential feature of the constitution, etc. I, on my side also tried to convince them that the main consideration, to my mind, was that if the amendment is without any limit, you could replace democracy with dictatorship, autocracy or even convert the state into a monarchical system. When I was in England during my student days I

followed the manner in which Hitler, though he was appointed by the President as the Chancellor under the Weimar Constitution exercised the power of amendment to declare himself the President and exercised the unlimited power under the Constitution to convert the state into a dictatorship. While this was going on, after Sikri left in March, when the judges were considering their judgments, Grover and I went to Baig. When we reached his house we were told Baig was taken ill. Soon thereafter Baig came out and was taken to the hospital in the car. We followed him there. He complained of pain in the chest and was admitted to the hospital. We were quite disturbed. We kept on enquiring about his health and were being assured that he was being treated and was improving. This illness of Baig gave rise to many assumptions and rumours. Some said it was feigned illness in order to delay the completion of the hearing and by prolonging it beyond Sikri's retirement, a hearing by a different bench would become necessary. Some said by keeping him in the hospital he was unable to render his decision. I don't know what the logic in all these assumptions was, because if he were unable to render his decision he would not be able to partake in the hearing. It was this that was alleged, though the very concept of justice demanded that all judges had to hear the arguments before rendering the judgment. Since Sikri was retiring the case could not be postponed further, so Sikri suggested that the proceedings could be recorded during the absence of Baig so that he could hear them when fit. But this suggestion was objected to by the lawyers on behalf of the Government. Niren De even threatened to withdraw from the case if Baig was left out. As a compromise however it was agreed that Palkhivala would submit his written arguments. In any case this did not become necessary as Baig became well enough to attend the hearings. Seme even suggested, which it appears was said to have been narrated by the head of the cardiac division of the hospital that Gokhale or someone else who called on Baig to enquire about his health passed on the draft of a judgment which Baig was to deliver, and that it was found under his pillow. Knowing Baig intimately, I certainly find it difficult to believe this canard. It may have been wrongly assumed that a copy of the judgment which was said to have been found under his pillow was given by Gokhale or some one concerned with the Government. Baig must have been writing his own views as , others were doing and when he was better may have asked his Secretary to bring the copy to him to go over it and maybe it was this that may have been found under his pillow. This is substantiated by two notes of Baig, which I have with me. One was his comments on the note of CJ and one on that of Hegde. This was on 24 March

1973 and the other addressed to Shelat acting CJ., Grover, Ray, myself and Palekar dated 27 March 1973 which were copies of a letter which he had sent to Hegde in reply to his new note in the hope that it may be helpful. In the first note of 24 March 1973, Baig says in the second paragraph: 'I feel well enough to be able to attend the court but on my doctor's orders I must postpone it till Monday next at least.' Where is the question of someone concerned with the Government sending a draft for Baig to adopt as his judgment? Such were the rumours and allegations all of which shows how irresponsible were who those initiated them and the press that gave them publicity.

One day during our morning walk Ray asked me, 'Brother, where do you get the concept of basic structure?' I said: 'From the same source which we have evolved various concepts of the constitution and its interpretation, which has contributed to the innumerable volumes of the law reports which have been published from the day we have inaugurated the Constitution.' He did not refer to this matter further. In any case we had considered various aspects and eleven judgments were delivered. However, I may give a brief resume of the judgments delivered on 24 April 1973. Those interested may refer to the actual report for the judgments. Six judges – Sikri Chief Justice, Shelat and Grover JJ., Hedge and Mukherjee JJ., and myself (five judgments) held that the amending power of Parliament is limited. Though Parliament has the right to amend any provision of the Constitution or abridge any of the fundamental rights the amending power does not extend to damaging or destroying any of the essential features of the Constitution. Though these may be amended they cannot be damaged or destroyed. I had in my separate judgment held that the word 'amendment' in Article 368 does not include repeal. Parliament could amend Article 368 and Article 13 as well as all the fundamental rights and though the power of amendment is wide it is not wide enough to totally abrogate or damage any of the fundamental rights or essential elements in the basic structure of the Constitution or destroy its identity. Parliament cannot exploit its power of amendment under Article 368 so as to confer on itself the power to repeal or abrogate the Constitution or to damage, emasculate or destroy any of the fundamental rights or essential elements or the basic structure of the substantive provisions. Even Khanna J., who was agreed in respect of the substantive provisions relating to basic structure, took the view that Article 31C did not abrogate the fundamental rights guaranteed under Article 14,19 and 31 and accordingly is valid on the ground that it does not alter the basic structure or framework of the Constitution. As I said he nonetheless held that Parliament's

power of amendment is limited and the basic structure or framework of the Constitution cannot be damaged or destroyed. He accordingly agreed with six of us that the Parliament's power of amendment is limited in that it cannot damage or destroy the basic structure or framework of the Constitution. The majority therefore held that Parliament cannot for instance abolish the sovereignty of India, or the free democratic character of the State nor can it injure the integrity and unity of India or abolish the State and destroy the federal structure etc. Nor can the amending power be so exercised as to make the Constitution lose its identity.

Even in respect of adequacy of compensation, though the amount payable cannot be challenged in a court the amount cannot be illusory or unreasonably low. It must have some relationship with the property acquired or requisitioned.

It was generally assumed and alleged that the manipulation by the Government in the appointment of judges was to obtain persons whose philosophy was intended to accord with the Government's philosophy or its commitment. More especially, 'committed' judges would, it was expected, subserve its objectives. While in some cases the appointees may have come up to the Government's expectations and even excelled them by being more executive-minded than the executive, nonetheless the appointing authority may have been disappointed when some others failed to satisfy their expectations.

In this regard I may recall, that while speaking on the subject 'Some Stray Thoughts' to the Advocates' Association in Ahmedabad as Chairman of the Communal Riots Commission in April, 1970 which the Chief Justice of Gujarat, Shri P. N. Bhagwati and judges of that Court attended, reported in 1970, Vol.II, *Gujarat Law Reports* (Journal XXV at XXIX), I referred to this aspect. I pointed out with reference to the appointment of Warren Burger as Chief Justice of the United States, that those who are appointed judges or Chief Justices to the highest court for the views they hold which are seen as being in accord with the views of those who appoint them, sometimes disappoint them by adopting views contrary to those they are expected to take. This is because the human mind with all its training may obstruct the achievement of an objective just to please someone, contrary to one's conscience. If the emotions and the consequent reasoning leads the appointee to different conclusions he will not oblige. President Roosevelt also attempted to pack the Supreme Court of the United States but failed. Again it is because in constitutional matters ninety percent of the cases are at the emotional level and if a judge inclines in a certain way he

will have the facility and resourcefulness to find reason to back his inclination. In other words, ‘the rational part of us’, as observed by Charles Evans Hughes, one of the great Chief Justices of the Supreme Court of United States,‘supplies the reason for supporting our predilections’. It is for this reason that unanimity has not been achieved, no matter who makes the appointment and with what motive. The determination of great constitutional issues such as freedom, personal liberty, etc., have an emotional appeal and vary with the philosophy, intellect and culture of the individual judge. The Roosevelt court was no more unanimous then any preceding it, nor was Gokhale, Kumaramangalam and Siddhartha Shankar Ray’s attempt to pack the court to obtain unanimity among those they helped appoint (to achieve their objective of making the Constitution subservient to the power of the executive) any more successful. This attempt having failed, as will be seen, other methods were adopted later. Reverting to the narration, in this Keshavananda Bharati case, the judgment of the Supreme Court in Golaknath’s case, as well as the validity of the amendments above referred to, were challenged and considered. What was put to test in the case was the role and the attitude of the judiciary and the judicial process in achieving social justice under the Constitution.

The Court, by a majority of 10 to 3, held that Article 13(2) does not place any limitation on Parliament’s power under Article 368 to amend the fundamental rights; and consequently, Golaknath’s case was held to be wrongly decided. The Court was however,, divided in determining the scope and extent of the power of amendment itself. By a 7 to 6 majority, the Court held that Article 368 does not enable Parliament to alter the basic structure or framework of the Constitution. The question that the minority was faced with, was, if it held that the amendment power was plenary and absolute, could the entire Constitution then be substituted by an entirely different Constitution – monarchical, dictatorial or presidential ? If so, it would not be the amendment of this ‘Constitution’ because what replaced it would not be ‘this Constitution’ but some other Constitution. To get over this objection, which had force, two of the six minority judges, namely, Ray J. (as he then was) and Mathew J. placed a limitation on the amending power by approving the contention of the Attorney-General and Shri H. M. Seervai that ‘an amendment would leave an organic mechanism providing the Constitution organisation and system for the State’. (Ray, J.: 461) ‘The only limitation is that the Constitution cannot be repealed or abrogated in the exercise of the power of amendment without substituting a mechanism by which the state is constituted and organised. That limitation flows from the language of the Article itself’.

(Mathew J.: 857). In other words, nine judges held that whatever the extent of the limitation of power of amendment, the power was subject to limitations and was not absolute. Whatever the reasoning of the majority of seven judges and the two judges constituting the minority, the recognition of the limitation of Parliament in the exercise of the amending power not to be able to abrogate or repeal 'this constitution', by the same analogy determines that if repeal or abrogation can be done only when another mechanism is substituted, the substituted mechanism cannot be called 'this Constitution'.

The postulate of the learned judges may be illustrated by an anecdote given by Shri Babul Reddy, a senior advocate who had submitted in another case. He said a person had presented his friend with a barber's knife. The friend having used it for some time had to replace the handle and after some years he also had to replace the blade. After this, the person who presented the knife asked his friend whether the knife given by him was rendering good service. The friend had to say that it was giving him good service. But the question is: was it the same knife the friend had presented him, when neither the handle nor the blade of the knife was the same or was even in existence? It obviously was not the same knife.That is what even the other two judges constituting the majority had considered regarding the implications of the amending power. I am sure this part of the judgment cannot be alleged to chill the heel of the legislatures or to obstruct the Government to bring forward legislation to provide for social justice.

The majority held that fundamental rights in Part III, except the right to property, was a part of the basic structure. There were also other basic props which we had indicated as being adumbrated in the Preamble to the Constitution. Khanna J., who was with the majority, did not accept that all the fundamental rights enshrined in Part III were a part of the basic structure. He said that the right to property was not. Except for this, he was in agreement with the rest of us constituting, the majority that the basic features of the Constitution cannot be amended in such a way as to destroy or damage its case. The other six judges held that there were no limitations except as aforesaid to the extent of what Ray and Mathew JJ. have indicated: and also except for Mathew J. who, though he held that the amending power was plenary and had no limitations, nonetheless did not deny that there are basic features or the core of the Constitution. While so holding, Mathew J. answered effectively a persistent criticism which had been tenaciously directed against the majority, that they had not indicated what feature

constituted the basic structure; nor was it possible to ascertain from those judgments precisely what those basic features were. He had said at pages 826–827:

‘I am not dismayed by the suggestion that no yardstick is furnished to the Court except the trained judicial perception for finding the core or essence of a right, or the essential features of the Constitution.... Few Constitutional issues can be presented in black and white terms. What are the essential features and non-essential features of the Constitution? Where does the core of a right end and the periphery begin? These are not matters of icy certainty; but, for that reason, I am not persuaded to hold that they do not exist, or that they are too elusive for judicial perception. Most of the things in life that are worth talking about are matters of degree and the great judges are those who are most capable of discerning which of the gradations make a genuine difference.

Nor do I think that all the provisions in the Constitution are equally essential. And our Constitution could very well have dropped many of its provisions. Merely because all the provisions of the Constitution have equal importance in one respect, namely, they are all embodied in one document, and can be amended only by the procedure prescribed in Article 368, it does not follow that all of them are essential features of the document in all other respects.

But the question will still remain, even when the core or the essence of a Fundamental Right is found, whether the Amending Body has the power to amend it in such a way as to destroy or damage the core.’

Though Mathew J., as I have pointed out, differed from those of his colleagues who thought that the basic structure of the Constitution can be abrogated by the exercise of the amending power, the existence of these fundamental features or the basic structure was not denied by him. In other words, eight judges (Sikri CJ., Shelat, Hegde, Grover, myself, Mathew, Khanna and Mukherjee JJ.) held that there are basic features of the Constitution while seven of them held (Mathew J. did not) that these basic features extend to the fundamental rights. Khanna J. held that the right to property was not a basic feature. It is not necessary to examine the logic of Khanna J.’s reasoning in singling out the right to property as not being a basic feature, which Mathew J. constituting the minority considered was a basic feature. But at any rate, as already noticed, Khanna J. considered all other fundamental rights to form the basic features of the Constitution.

As I had earlier pointed out that this case was heard for 66 days, during which the arguments on behalf of the Government, particularly that of the late Attorney General, were abrasive, and even threatening. The comments from a few of the senior judges were pungent and could have been well avoided. The majority of us silently suffered these marathon arguments. I think I was perhaps the only judge who referred in my judgment to the threat of the Attorney General, Niren De, about the dire consequences which the Court would have to face if the judgment went against the Government. On this aspect, at page 613 of the judgment (1973 IV SCC), I said: 'There have again been arguments for taking consequences into consideration which really highlighted what would be the dire consequences if the result of the decision being one way or the other but this court ought not to be concerned with these aspects, if otherwise the decision is in accordance with the view of the law it takes. We should free ourselves of any considerations which tend to create pressures on the mind. In our view, it is not the gloom that should influence us, as Milton said, 'we cannot leave the real world for a utopia but instead ordain wisely', and if I may add, 'according to the well accepted rules of construction and on a true interpretation of the constitutional provisions'.

In considering this case, I had earlier referred to the long hearings and to the cut and thrust of the lawyers, judges during the arguments. I had said 'we had been taken, during the lengthy arguments, on a global survey of the constitutions of the various countries, large number of treatises on constitutional law, views of academic lawyers, the applicability of natural law or higher law, principles, extracts from Laski's *Grammar of Politics*, etc., by the distinguished lawyers who with great industry have completely eviscerated the contents of the vital far-reaching issues involved, though sometimes some aspects tended to hover above *terra firma* and sometimes skirted round it, particularly when the views of academic writers had the utmost freedom to express on hypothetical problems unrelated to concrete issues falling for a decision in any case were pressed on us. I had earlier referred to my observation and comments, regarding the threat of the Attorney General for taking the consequences of our decision into consideration. I must confess that some of the arguments show that the tendency had been to depend more on the views of judges from other lands, however eminent, when we have in this the highest Court of the land during the last over two decades forged an approach of our own and set out the rules applicable to the interpretation of our Constitution'. I further observed:

‘... the citizen whose rights are affected, no doubt invokes the aid of the judicial power to vindicate them, but in discharging its duty, the Courts have nothing to do with the wisdom or the policy of the legislature. When the courts declare a law, they do not mortgage the future with intent to bind the interest of the unborn generations to come. There is no everlasting effect in those judgments, nor do they have force till eternity as it were. The concept, on the other hand, is that the law declared in the past was in accord with the settled judgment of the society, the social and economic conditions then existing, and that if those judgments are not likely to subserve the subsequent generations or the requirements and needs of the society as it may be then conditioned, they will have to be changed by the process known to law, either by legislative action or judicial re-review where that is possible. The Courts, therefore, have a duty, and have indeed the power, to re-examine and re-state the law within the limits of its interpretative function in the fullness of the experience during which it was in force so that it conforms with the socio-economic changes and the jurisprudential outlook of that generation. The words of the law may be like coats of Biblical Joseph, of diverse colours and in the context in which they are used they will have to be interpreted and wherever possible they are made to subserve the felt-need of the society. This purpose can hardly be achieved without an amount of resilience and play in the interpretative process’.

On the desirability of drawing heavily or relying on the provisions of the Constitutions of other countries or on the decisions rendered therein, a word of caution will be necessary. It cannot be denied that the provisions of the Constitutions of other countries are designed for the political, social and economic outlook of the people of those countries for whom they have been framed. The seed of the Constitution is sown in a particular soil and it is the nature and the quality of the soil and the climatic conditions prevalent there which will ensure its growth and determine the benefits which it confers on its people. We cannot plant the same seed in a different climate and in a different soil and expect the same growth and the same benefit therefrom. Law varies according to the requirements of time and place. Justice thus becomes a relative concept varying from society to society according to the social milieu and economic conditions prevailing therein. The difficulty, to my mind, which foreign cases or even cases decided within the Commonwealth where the Common Law forms the basis of the legal structure of that unit, just as it is to a large extent the basis in this country, is that they are more often than not concerned with expounding and interpreting provisions of law which are not *in*

pari materia with those we are called upon to consider. The problems which confront those Courts in the background of the State, of the society, the social and economic set-up, the requirements of a people with totally different ethics, philosophy, temperament and outlook differentiate them from the problems and outlook, which confront the courts in this country. It is not a case of shutting out light where that could profitably enlighten and benefit us. The concern is rather to safeguard against the possibility of being blinded by it. At the very inception of a constitutional democracy with a Federal structure innovated under the Government of India Act, 1935, a note of caution was struck by the Chief Justice of India against following even cases decided on the constitutions of the Commonwealth units, which observations apply with equal force, if not greater, to cases decided under the American Constitution. Gwyer CJ., in *In re: The Central Provinces and Berar Act No.XIV of 1938*, which was the very first case under the 1935 Act, observed at p.38: 'But there are few subjects on which the decisions of other Courts require to be treated with greater caution than of federal and provincial powers, for in the last analysis the decision must depend upon the words of the constitution which the Court is interpreting; and since no two Constitutions are in identical terms it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another.'. This observation was approved and adopted by Gajendragadkar, C.J. (speaking for seven Judges in *Special Reference* 1 of 1964) (see pages 614-615).

The long hearing and the loads imposed on the judges during this period had its different effect on different judges. I have indicated my reactions in the above passages. These passages, and others were greatly appreciated by my brother Palekar who passed on one or two chits to me while I was reading my judgment congratulating me on the purple passages in it as he called them. Later while thanking him I asked him then, why is it you took a different view which facilitates amendment without limit leading the government to act without any limitation in an arbitrary and undemocratic manner. He said: 'My view was that it is for the electorate to control such government.' The effect on the long arguments produced on them can be ascertained from the following passage of Baig:

'The cases before us have become so much loaded with learning and marked by brilliance of exposition of *all points involved either directly or indirectly*, both by my learned brothers and the members of the Bar.… That we do stand in danger…… of losing the wood for the trees and if we get entangled in the

branches of the trees we may miss reaching the destination; the correct conclusion which the majority had reached.' (1973 AIR SC 1967).

Certainly if clear thinking is not forthcoming, what Baig says will be the result. I am reminded of the apology of the Hon'ble Srinivasa Shastri a pre-independence public figure who in a speech at Edinburgh criticised Pandit Nehru very harshly. Later he apologised to Nehru that in making the uncharitable remarks he was carried away by his own eloquence. Perhaps Baig's apprehension of becoming confused by the long and eloquent submission was indicated by his not signing the summary of conclusion given at the end of the judgment with the judges, who refused to sign it along with Ray, Mathew and Dwivedi, which indicated that nine of them including two of them who did not agree with the other seven clearly perceived what the seven had held.

There were clear indications that the Government while awaiting the decision knew what the decision would be before it was delivered and had already made up its mind to supersede three judges to make Ray J. Chief Justice. It could be inferred from the facts disclosed at the time, but not perceived, that Ray J. had knowledge of his elevation. The first event happened a week before the judgment. Ray and his wife, I and my wife and Baig and his wife were invited to a farewell dinner for the Russian ambassador given by the external Affairs Minister Shri Swaran Singh. At this dinner, Mrs Ray and my wife, who also had accompanied us, sat together. Baig came alone. After dinner as we were leaving, the External Affairs Minister and Mohan Kumaramangalam were at the door seeing off the guests. Next to the exit there was a table on which *paan ka beeda* (betel leaf rolls) were kept for the guests. My wife and I were also in line to leave. My wife had moved aside just to take a *paan ka beeda* before leaving. Ray and his wife were before us, but because of the guests near the *paan* table we were not noticed. When Ray and his wife came near the door Mohan Kumaramangalam shook hands with Ray and said, 'Congratulations next week'. Ray held Mohan's hand, gave a smile while bending his head to one side to show his appreciation or thanks. My wife and I who were behind heard it and saw this incident. Meanwhile Mohan saw us, and said 'There is Reddy' and came to see us off while Ray and Mrs Ray left. I was unable to understand what these congratulations were for. In the morning when we met on our walk I asked Ray: 'What was Mohan congratulating you for?' He said, 'I don't know, perhaps it is because we will be delivering our judgment next week.' I said, 'Why congratulate you alone, I am part of the Bench too.' He said he did not know.

The second event was just a few days before 24 April, the date listed for delivery of our judgment. I think it was a Sunday or Monday evening that Ray phoned me to inform that Hidayatullah was in Delhi staying at the Ashoka Hotel, where he had an Arbitration case. He said:‘ Let’s go and see him.’ I said, all right. Ray and his wife came over and picked up me and my wife and we went to see Huddi . We met him and talked to him for some time, after which Ray said: ‘Huddi, we are going to come and have dinner with you on Thursday.’ But it later appeared that Ray would take charge as the Chief Justice on 26 April. This self-invitation suggested to Huddi came as a surprise but it was welcome. Huddi said: ‘Of course I will be happy, we will go to the kofta kabab place in the Hotel at about 7.00 or 7.30 p.m.’ We delivered the judgment on 24 April, which was the last working day before Sikri retired on 25 April. But there was no announcement by the President of the appointment of the Chief Justice in place of Sikri who was retiring the next day. We were asked to bring our gowns home and when it was announced in the evening we could go to Rashtrapati Bhavan for the swearing-in of the Chief Justice. Grover who knew the Home Secretary had phoned him but he could only say that the matter was with the President, but nothing was notified. As I came home at about 4.45 after attending the farewell given by the Supreme Court staff, I had a phone call from Mr. Ranga Reddy who was a representative of the *Indian Express* whom I had met in New York in 1969, asking me whether he could visit me, I said yes. I had not yet changed when he came and apologised for disturbing me. He said: ‘Do you know that Ray has been made the Chief Justice?’ I was taken aback and very disturbed at three seniors being superseded. He said it was being talked about by the members of the Bar. As he was saying this I had a phone call from Huddi. When I went and took it Huddi said, ‘Have you heard the radio news at 5.00 p.m?’ I said no. He said Ray had been appointed the Chief Justice and said that the engagement for 26 evening was cancelled. He said, ‘I do not want my superseded colleagues for whom I have respect to think I was hosting a dinner to Ray on his appointment as a Chief Justice. I do not want them to misunderstand me for celebrating the supersession by giving a dinner to the person who has superseded three senior judges’. I said: ‘I quite understand you. I would have done the same myself.’ He further told me that even before the announcement at about 2 p.m. when the lawyers assembled in his room for the Arbitration hearing, they had informed him that one of them had got the information from Calcutta where Siddhartha Shankar Ray had sent word of the supersession; but he was not certain. Huddi also informed Ray about the cancellation. I phoned Sikri but I was informed that

he had gone to play golf. I phoned Shelat, Hegde and Grover, but all of them, I was informed, had gone to Sikri's house.

The third event was narrated by Shelat. It had been Ray's turn for the week to send his car to Shelat with whom he had a car pool arrangement to go to and from the court. On 24 April when Ray dropped Shelat at his house he wanted to know who would pick up whom on the following day. This was an unnecessary question as it was Ray's turn for the whole of the week. This question indicated that Ray was aware of his appointment the next day. It may be mentioned that Sikri was retiring on 25 April. So the staff of the Supreme Court had arranged a farewell party for him 4.15 p.m. on that day. All of us were present. We came home at about 4.45 p.m. After the announcement of Ray being appointed Chief Justice Shelat and Hegde resigned. Grover delayed his resignation and applied for leave. It was only later that he resigned as from 1 June, being on leave till 31 May 1973.

In the evening of 25 April, there was a dinner given by the Gazetted Officers of the Supreme Court to bid farewell to Sikri. Ray and I had arranged to attend it but after the announcement it became embarrassing. My wife considered the supersession an injustice done to the three senior justices and was not inclined to attend it. I however persuaded her. Ray and his wife, my wife and I then went in Ray's car to the dinner. When Sikri arrived he came to the place where we were sitting to greet us. As soon he saw Ray he said to him, 'You will rue the day you accepted the Chief Justiceship.' This was embarrassing to Ray but he said something to Sikri and they were seen talking together.

As stated by Kuldeep Nayyar in his book, *The Supersession of the Judges*, Ray was on the defensive, and had told Sikri that Gokhale had come to his house on 24 April afternoon to offer him the post. This would be after the judgment in Keshavananda's case was pronounced by all of us on that day, i.e., 24 April. According to Sikri as narrated by Kuldeep Nayyar, Ray said that when he was offered the post he did not accept it straightaway. Kumaramangalam told Kuldeep Nayyar on 25 April that Ray accepted only after thinking over the offer 'for some time'. From what I know and what has been stated earlier all these statements are unreliable. According to Hidayatullah's information and my information and the All India Radio announcement to which I referred, the President had already issued the notification of Ray's appointment. All this could not have taken place within an hour or so. How did the committee of the Cabinet which 'met on 24 April at 10.00 aim. meet before the judgment on Parliament's

power over the fundamental rights was declared? By that time however the government knew that the judgment was a split judgment of 7:6. The texts of the unfavourable judgments were in the hands of the Government' (Nayyar :13,14).

My judgment sent to one of my brother judges had not been returned to me. The way Kumaramangalam a week before had congratulated Ray made it obvious that Ray knew, and that he had already given his consent. After Ray left Shelat at his house about 5.00 p.m., his question to Shelat was who would come to fetch whom the next day. All these clearly showed that Ray knew about the announcement of his being appointed Chief Justice much earlier.

My view is supported by the version of Kuldeep Nayyar that the Government in its inspired news story of Ray's appointment on the 25 April said that the decision on Ray 'was taken a few days ago' This was further confirmed by Gokhale on the Delhi TV News on 31 May 1973 while paying a tribute to Kumaramangalam who had died in an air crash that day. In his broadcast (from an extract given by Kuldeep Nayyar on page 14 of his book) it appears that he and Kumaramangalam had decided that the decision to supersede should be taken by them even though it was a delicate one and likely to create a lot of controversy. According to them it was the right decision, and it must be taken whatever the reaction of some. Gokhale says he asked him again and again and he said, 'Gokhale we have taken this decision and I have joined you in taking the decision and I will stand by you whatever happens afterwards. We stand or fall together.' That was his loyalty to a friend which is rarely to be found (Nayyar :14). According to Kuldeep Nayyar, 'A leading solicitor from Calcutta says that Ray had consulted him on his appointment three days before his appointment.' (Nayyar : 14).

It appears to me that when you take to politics, your memory as a politician becomes transient. When a decision was taken and the person in whose favour it was taken was congratulated a week before by none other than one of the persons who had taken the decision and whose loyalty to a friend in taking the decision was extolled by the other party to the decision, it is too incredible that the decision could have been taken after the judgment on 24 evening.

At the swearing-in of Chief Justice on the morning of 25 April 1973 at the Ashoka Hall, when I met Mohan Kumaramangalam. I asked him, 'Mohan, what have you done?'. He said: 'What have I done?' I said: 'You have injured the Court.' He said: 'What could we do? You people were hearing the case so long

and there was hardly any time after the judgment for announcing the appointment'. I said: 'Heavens would not have fallen if you had appointed Shelat J. whose term was for about three months of which only about twenty were working days. Meanwhile, you could have debated the principle or policy upon which a Chief Justice of India could be appointed. In this way the public would have been prepared for any subsequent appointment consistent with the resolution of Parliament in this behalf.' He did not reply, so I left it at that.

The official reason which Shri Gokhale gave for not following seniority was that the filling up of a vacancy in the office of the Chief Justice of India, should be approached with paramount regard to the consideration that, 'For the performance of the duties of Chief Justice of India, there is needed, not only a judge of ability and experience, but also a competent administrator capable of handling complex matters that may arise from time to time, a shrewd judge of men and personalities and, above all, a person of sturdy independence and towering personality who would on the occasion arising, be a watchdog for the independence of the judiciary. It is well accepted that the qualifications needed for a successful Chief Justice are very different from the qualifications which go to make an erudite and able judge.' This is idle rhetoric. Whether or not the judge who superseded the three senior judges was a competent administrator or a person of sturdy independence and a towering personality or was a watchdog of the independence of the judiciary is too well known. No one suggested that any one of the superseded judges was wanting in any of the qualifications. If at all, their robust independence and the qualities which Shri Gokhale enunciated, were possessed by them in abundance. Particularly two of them were Chief Justices whose administrative ability could not be doubted, while the judge who superseded them had had no such opportunity to indicate his administrative ability. Is it for that reason they were superseded? Mohan Kumaramangalam, however, gave a different reason and probably the right one. He said, 'The social philosophy of the superseded judges did not coincide with the thinking of the Government which had won a massive mandate of the people.' The cat was out of the bag. They wanted Chief Justices and judges of the Supreme Court who would toe the line of the Government. They would not be forward-looking persons, but 'looking-forward' judges as Hidayatullah had said that government wanted to appoint. The oath a judge takes, however, does not require him to conform to the social philosophy of the Government.

One of the most significant pieces of information about how one of the Ministers

of Indira Gandhi's Cabinet tried to influence one of the colleagues in the 13-Judge Bench has been narrated by his wife. It appears that the cabinet minister and his wife who were well known to my colleague and his wife, invited themselves on one or two Saturdays for lunch to persuade him to take the view which the Government wanted the Court to take so that the judgment would be that of a majority which without him would be a minority. In fact the colleague was told that if he didn't agree he would be losing a great opportunity for a higher post. I was proud to know of his forthright refusal and also when he told them that such a job may be offered to another colleague who will really welcome it.

In so far as the *ratio* of Keshavananda is concerned, in a subsequent case during the Emergency in *Indira Nehru Gandhi vs. Raj Narain* (AIR 1975 SC 2299), known as the 'Prime Minister's Election case', Khanna J., however, clarified the position and fortified the view that I had always held of Khanna J.'s judgment that he had also held all the fundamental rights except the right to property as basic structure. At page 2369 Khanna J. observed:

'It would appear from the above that no distinction was made by me so far as the ambit and scope of the power of amendment is concerned between a provision relating to fundamental rights and provisions dealing with matters other than fundamental rights. The limitation inherent in the word 'amendment', according to which it is not permissible by amendment of the Constitution to change the basic structure of the Constitution, was to operate equally on Articles pertaining to Fundamental Rights as on other Articles not pertaining to these rights.'

At page 2370, he again said:

'I also dealt with the matter at length to show that the right to property was not a part of the basic structure of the Constitution. This would have been wholly unnecessary if none of the fundamental rights was a part of the basic structure of the Constitution.'

In Indira Gandhi's case, though two of the three judges who were parties to Keshavananda Bharati's case and who were still on the Bench, did demur to the *ratio* of the decision in Keshavananda Bharati's case though they did not actually say so. If one regards the sharpness of the division, particularly at the time when the order in Keshavananda Bharati's case came up for signature, which four of the judges forming the minority, viz., Ray, Mathew, Baig and Dwivedi JJ. refused to sign it on the ground that the decision did not disclose what

specifically are the basic features, etc., the view expressed by Mathew J. has significance in raising an inference that he had accepted the *ratio* of that decision which of course exhibits a judicial discipline. No doubt, in striking down the Constitution (Thirty-ninth Amendment) he held that the amendment exercised a legislative power, which under Article 368, the amending body did not possess, Mathew J.'s general observations are of significance. He observed at page 2382:

Article 368 does not confer on the amending body the competence to pass any ordinary law with or without retrospective effect.'

At p. 2381 he said:

'There can be no liberty where the legislative and executive powers are united in the same person or body of magistrates, or if the power of judging be not separated from the legislative and executive powers.'

Again at p. 2382 he was of the view that:

'If the basic postulate that a sovereign can act only by enacting laws is correct, then that is a limitation upon his power to do anything he likes.'

Mathew J. decided in Indira Gandhi's case, applying the basic features rule, admitting thereby that there was consensus among the seven judges in Keshavananda Bharati's case as to what constitutes the basic structure of the Constitution, though, as I have indicated, he had denied earlier that the decision in Keshavananda Bharati did not enable the determination of what were the basic features and hence he had then refused to sign the order of the Court. At p. 2372 of Indira Gandhi's case he observed:

'I proceed on the assumption that the law as laid down by the majority in that case should govern the decision here, although I did not share the view of the majority.'

Chandrachud J. (as he then was) after noticing that the minority of six judges in Keshavananda Bharati's case of which he was one, took the view that there were no limitations of any kind on the power of amendment, though two of them were willing to foresee the limitation that the entire Constitution could not be abrogated, leaving behind a State without a Constitution, observed at page 2461:

'Some scholars have clapped and some scholars have scoffed at the decision in the Fundamental Rights case. These criticisms, I cannot deny, cause a flutter in the ivory tower. But by Article 141 of the Constitution, the law declared by the

Supreme Court is binding on all courts within the territory of India. The law declared by the majority of 7:6 in the Fundamental Rights case must, therefore, be accepted by us, dutifully and without reserve as good law. The history of law courts abounds with memorable decisions based on a thin majority'

Subsequently, during the Emergency, Ray CJ. made an abortive attempt to have the decision in Keshavananda Bharati's case reopened, as in some of the land ceiling cases, mention was made before the Bench that the basic structure question arose. Therefore, the Chief Justice seemed to have directed such of those cases to be placed before a Full Court without actually examining whether any such question did, in fact arise. When a Full Court constituted by him was being heard, his colleagues on the Bench began to scrutinise how these cases were placed before the Full Court and whether the order referring them to a Full Court was an administrative order or a judicial order, etc. This inquisitorial questioning, somehow seemed to have made the Chief Justice announce as suddenly as he had referred the cases that the Bench be dissolved. The Constitution of the Full Bench as well as its dissolution at his own discretion was clearly beyond the Chief Justice's power.

An attempt was made during that period to prohibit courts from going into the question of the validity of the constitutional amendments by the Constitution (Forty-second Amendment) Act. The attempt was to stop the Courts from applying the basic feature theory in relation to constitutional amendments. But that itself was begging the question, because whether Parliament had the power to prohibit Courts from going into the question of the validity of the amendment has to be determined by someone and that someone is certainly not Parliament, nor the Executive. Obviously it is, the Judiciary that determines this question under Article 32 of the Constitution and even to hold that, under the forty-second Amendment, it has no jurisdiction to go into the question, it is that Court that has also to determine that question. The Supreme Court, on a consideration, may come to the conclusion that Parliament cannot make such an amendment which will oust the jurisdiction of the highest Court of the land guaranteed under Article 32. Subsequently, in *Minerva Mills Ltd., and Others vs. Union of India*, this question was raised before a Constitution Bench and the judges applied the basic structure theory. The majority consisting of Chandrachud CJ., Gupta, Untwalia, and Kailasam JJ., Bhagwati J. (dissenting) while adopting the basic structure theory in Keshavananda Bharati's case struck down clause (5) of Article 368 as amended by Section 55 of the Constitution (forty – second

Amendment) Act, 1976. It was held that section 55 of the amending act which added clauses (4) and (5) to Article 368 confers on Parliament a vast and undefined power to amend the Constitution so as to distort it out of recognition. Since the Constitution conferred only a limited amendment power on Parliament as held in Keshavananda Bharati's case, Parliament cannot, under the exercise of that limited power, enlarge that very power into an absolute power. Hence Section 55 of the Amendment Act was held to be beyond the amending power of Parliament and was void since it removed the limitations on the power of Parliament so as to confer a power to damage or destroy the basic or essential features of the Constitution or its basic structure. So, till today, every attempt has been made to get the Keshavananda Bharati case over-ruled, but without success. I dare say further attempts may be made to have it overruled as more than anything else this case had become a red rag to the Executive Bull, more a matter of prestige than a hindrance to the implementation of schemes for social reform.

Seervai, the learned advocate who appeared in the Keshavananda Bharati case has in his *The Emergency: Future Safeguards and the Habeas Corpus Case: A Criticism* (1978) expressed his views which are in accord with those of the majority in that case. He refers to the explanation of Khanna J., that in his judgment in the Keshavananda case, while it was generally believed to have been held that fundamental rights were not a part of the basic structure of the Constitution, this was not correct. It was only the right to property that was not basic. However, the extraordinary claims made for the amending power in the election case led to a deeper analysis of that power. It was contended in the Election case that the amending power was an amalgam of legislative, executive and judicial power. It included the power to condemn people to death – as the British Parliament did 250 years ago by Acts of Attainder. The Supreme Court held that Article 329A was void for violating the basic structure of the Constitution (Seervai, 132-133,1978). Seervai proceeds to say, The extreme and untenable exercise and untenable proposition in support of the amending power and its actual exercise to secure the success of Mrs Gandhi's appeal considered in the light of the illuminating judgements of Mathew J. led the present writer to enquire whether in the Fundamental Rights case counsel on either side as well as the judges had not overlooked important aspects of the amending power and failed to notice certain historical facts and draw the right conclusions from them. His chapter on the amending power was written during the Emergency and before the elections. But the issue raised and decided by the election has

confirmed the views expressed in that chapter. The result of his thinking out the question of the amending power afresh are given below.' (Seervai 1978: p. 133).

'In the Fundamental Rights case, counsel asked the question whether a constitution without power for its own amendment would not lead to its being subverted by a revolution and rightly answered it in the affirmative. But counsel and judges did not ask the question, first whether a wide but not unlimited power of amendment would also lead to a revolution and secondly whether in fact such limited power had led to a Revolution.' The question was whether the amending power under Article 368 could be used for converting the constitution even without a revolution, using the absolute majority in the election, without a mandate for it to abolish the constitution, to convert the state to a dictatorship or monarchy, etc,. After referring to the history of amending power in Canada, Australia, the statute of Westminster as originally drafted, etc. (Seervai: 133 to 135), Seervai said, 'We have seen that a constitution without the power of amendment can be changed only by a revolution because there is no other way of changing it'. This assertion of Seervai's may be doubted because an enlightened electorate can on a referendum authorise the election of another constituent assembly to frame a constitution suitable to the social and political ethos of the people of the generation, prescribing therein the limitation of the amending power. Even so Seervai after going over the proceedings before the fundamental rights case and its decisions, ultimately concludes at pages 140–141: 'We have already seen that limitations on the amendment power of Parliament are not inconsistent with the sovereignty of a state or the Parliament. However, the elections held in India in 1977 furnish a classic illustration that the representatives of the people in the legislatures do not always reflect the people's will. Those representatives can prevent an expression of the people's will so as to be able to act contrary to that will. The censorship imposed throughout India, accompanied by preventive detention without reasons assigned and without redress, was deliberately intended to prevent the expression of the people's will and to push through measures which, had the people been consulted would have been rejected by them, as the 1977 elections clearly showed. For, as soon as the people were given an opportunity to express their will, they totally rejected all that had been done in their name by their representatives. Therefore, it is not possible to derive support for an unfettered amending power from the theory that the representatives of the people always reflect the people's will. On the contrary, the limitations on the amending power would prevent any attempt, first, to suppress the expression of the people's will and then to act contrary to it.'

The exposition of Seervai accords with the possible repercussions of an amendment with limitations. It is instructive to peruse the articles in Kuldeep Nayyar's book on the supersession of judges published by Hind Pocket Books, 1973. These show that the authors, apart from the article, 'The 13th Chief Justice' by Nayyar have included the views of each of the the superseded judges, Jayaprakash Narayan's 'Appointment of Chief Justice' (sent with his letter to Indira Gandhi, her reply and Jayaprakash Narayan's reply to her), S. Kumaramangalam, and H. R. Gokhale's views respectively, M. C. Chagla and N. A. Palkhivala's views and an interview with S. M. Sikri as well as H. P. Ranina's narration of the judgment and its *ratio.* Those interested in this subject and views on the approach of the government on selection of judges and Chief Justices the limitations on Article 368 providing for the amendments of the constitution should read them as they deal with each of the views expressed immediately after the judgement and about the supersession. Apart from this M. C. Setalvad, the Attorney General of India (for twelve years from 1950 to 1962 prior to his tenure he was Advocate General of Bombay from 1937 to 1942 from which post he resigned as he did not want to serve the British when the country was fighting for its freedom) has expressed his view. He was a distinguished lawyer, represented the country from 1966 to 1972 in the Rajya Sabha as a nominated member. In his Tagore lectures published in 1974 by Eastern Law House., he has included an addendum of eight pages after the delivery of the lectures on the decision in Keshavananda Bharati Case by a Bench of thirteen judges. His views as well as those of Seervai and Palkhivala in their respective books, *The Emergency, Future Safeguards and the Habeas Corpus Case* and *Our Constitution Defaced and Defiled* are instructive to all those who are interested in the democratic government which the framers of our Constitution have envisaged when they drafted the Constitution and adopted by the people of India and the manner in which the three branches of its government have been working. A perusal of these two books will help us in understanding the *ratio* of the decision in Keshavananda Bharati case.

20

End of Judicial Tenure

In May 1973, soon after the Keshavananda judgment we adjourned for the summer vacation. Wherever we went there was a great deal of discussion, criticism and allegations against the Indira Gandhi government for superseding three senior judges and appointing Ray as Chief Justice of India. On 17 July, after the summer vacation, P. N. Bhagwati, the Chief Justice of Gujarat and V. R. Krishna Iyer, Judge of the Kerala High Court who had been appointed a member of the Law Commission, were appointed as Judges of the Supreme Court. Two months later P. K. Goswami, Chief Justice of Assam and R. S. Sarkaria, Judge of the Punjab High Court were appointed on 10 September 1973 and 17 September 1973 respectively. Justice A. Alagiriswami, who was a Judge of the Madras High Court and was a member of the Law Commission was appointed on 17 October 1972. While the hearing of the Keshavananda case was going on Justice Alagiriswami was sitting with us whenever we were not sitting in the Keshavananda case. Justices Vaidyalingam and Dua who were appointed as *ad hoc* judges on 23 October 1972 and 4 October 1972 had retired on 4 May 1973 and were also available as *ad hoc* judges till 23 October 1973.

On the retirement of Vaidyalingam and Dua as *ad hoc* judges on 23 October 1973, Chief Justice Ray gave a dinner for them. As most of us had gathered at the Supreme Court about 8.00 p.m. on the day of their retirement there was a phone call for Ray. The message was that our brother Arun Kumar Mukherjee had expired owing to a massive heart attack just as he was getting ready to come over for the dinner. All of us were shocked. Ray cancelled the dinner and we went to Arun’s house. We found out that he had dressed and was getting ready

when he felt unwell. Immediately his wife Geeta put a pill under his tongue to increase his circulation but it was no use. What a loss it was to the court.

He was a wonderful man, every inch a gentleman, an erudite scholar and a great friend. To some of us his death left a void and prevented the completion of his book on Gangesha a fifteenth century scholar and saint. One day when we visited him he was doing some work on it. On our enquiry he showed a trunk in his office full of books and papers relating to this great scholar, particularly a commentary on Gangesha by Jaidev Pakshadara Tatra Chintamani Navyanyaya (1425-1500). Mukherjee had only one son. For Geeta the loss was irreparable.

Justice Palekar retired on 4 September 1974 but just two days before his retirement, Justice A. C. Gupta of the Calcutta High Court was appointed. The other appointment made was of Justice N. L. Untwalia, Chief Justice of the Patna High Court, on 3 October 1974. This was almost towards the end of my tenure, so that we would have fourteen judges and with the Chief Justice fifteen. When Untwalia's appointment was under consideration, Chief Justice Ray consulted me. In fact I was consulted only in respect of two appointments, one of P. N. Bhagwati and the other, of Chief Justice Untwalia. I had earlier stated that there was some difficulty about Bhagwati's appointment which was being considered prior to the supersession and did not fructify. This was known to me only through Bhagwati. In respect of Untwalia, Chief Justice Ray in one of his morning walks asked me my view of Untwalia, since I had visited Patna once or twice and had known Untwalia well. I told him his appointment would be an asset. He however remarked that his appointment would deprive the Patna High Court of a capable Chief Justice. I said this should not be a reason for depriving the highest court of his services.

After the vacation in 1973 I sat with my colleagues in different Benches dealing with various matters as is evident from the reported cases in 1973, 1974 and some in 1975, *Supreme Court Cases/ Supreme Court Reports/All India Reporter,* etc. It will be burdening this autobiography to refer to these judgements except to deal with one or two matters of importance.

The first one deals with detentions under the Preventive Detention Act affecting the liberty of the subject. The detaining authorities resorted to detentions on grounds which in many cases could not be justified. We had in such cases to declare the detention invalid and free the *detenus*. In one case particularly, when sitting in a four Judge Bench case, we decided that though there were grounds

which were alleged, there were others which were not included in the order of detention. In such cases we held the detention order invalid because if the detaining authority, while detaining a person, omitted to include the grounds which were helpful also in the order of detention, the detenue was deprived the chance of contending that they were not sufficient to detain him. The non-disclosure of facts and grounds of which the detaining authority were aware made the order of detention invalid.

The second matter dealt with the minority right to administer educational institutions of their choice, involving the application of the Fundamental Rights in Articles 28,29 and 30 of the Constitution. This is dealt within a nine-judge full bench decision in *Ahmedabad St Xaviers College Society and Another V State of Gujarat and others*, 1974 (1) SCC 717 decided on 26 April 1974 (nearly a year after the Keshavananda case). The bench comprised Ray CJ, myself, Palekar, Khanna, Mathew, Baig, Dwivedi, Chandrachud and Alagiriswami JJ. We began hearing it towards the last term of 1973.1 shall deal with this case later.

Towards the end of July or the beginning of August 1973, we received a letter from my niece Suverna's brother-in-law, that ever since she had lost her husband she had become a recluse and depressed. She had withdrawn from all activities and though her children were in a boarding school, he thought a visit to us to spend a month or two would do her good. In view of this letter my wife invited her and fortunately Suverna came to visit us. We found her condition as described by her brother-in-law in his letter. We got our doctor Dr Mirchandani working in Safdarjung Hospital, a friend of ours, to help her. After a careful examination, he advised a course of treatment, the drugs she should give up and prescribed those she should take. We persuaded her to do likewise, which she was willing to do. At the same time my wife began to take her on tours of the various places of interest, and at weekends to places like Mathura, Agra Red Fort, Taj Mahal, Meerut, Saharanpur, etc. We also planned a trip to Dehra Dun and Badrinath, where there is one of the most important of the twelve *jyotirlingams* Lord Shankara is said to have established. On the way we proposed to visit other places, one of which was Sivananda Ashram of which Swami Chidananda was the head. As pointed earlier when we visited Swami Sivananda in 1953 he had advised us to visit Badrinath when we were young. Though I promised to do so I could visit the place only in 1973 owing to my preoccupation with my work. Mathura was only 146 kilometres from Delhi, situated on the west bank of the river Jamuna. It is said to be the birthplace of

Lord Krishna and is one of the oldest cities of India. We also visited, a few kilometres from Mathura, Brindavan, the city of a thousand shrines where every footstep is said to be hallowed ground, once graced by Lord Krishna. In a couple of weeks Suverna began to show an interest in life. I tried to get the Border Roads Organisation which was a part of the military organisation to take us to Badrinath. This organisation takes an eight-seater van twice a week, to carry provisions to those engaged in constructing and maintaining border roads. There are also border road rest houses on the route where we could halt. These rest houses provided vegetarian meals. When I contacted the General in charge of the organisation and requested him to accommodate the three of us on our tour, and told him that we would bear all the charges and expenses, he said, 'How can I take a Judge of the Supreme Court and his family to travel in a van in which workers and goods are taken?'

I told him: 'Since we are going on a religious trip, you kindly don't think of us as VIPs but as yathriks.' In the end he agreed.

In September we went on a tour of a week or nine days. The first visit was to our friend Major Ratan Singh and his wife for a day at Dehra Dun. They took us in their car to Hardwar from where we got into the border roads van which took us on our journey via Rishikesh, Laxman Jhoola, Joshi Math to Badrinath. Our trip of two days was exciting and the scenery was beautiful with the Ganges and its tributaries flowing below. The two main tributaries of the Ganges, the Alaknanda and the Mandakini, flowing down the hills furiously, were exciting and exhilarating. Though the trip was most enjoyable there were same places through which we had to go which were dangerous and fearsome. Our stays at the rest houses were also comfortable. When we reached Joshi Math in the evening to spend the night, the Army Officers informed us that His Holiness the Junior Shankaracharya of Kama Koti Peetam, was staying with them, as he also wanted to go to Badrinath. He was designated as the successor of the Senior Shankaracharya who was very old; hence most of the functions were being discharged by the Junior Shankaracharya. When we visited him at the Army guest house where he was staying, the army officers had wrapped him in a blanket as he could not bear the cold. Actually the Shankaracharya was shivering. I told the army officers to wrap another rug around him which they immediately did. It gave him some comfort. When they told him my name and said that I was visiting Badrinath and had on the way come to see him, he said to me, 'Who does not know you? You were the Chief Justice of Andhra Pradesh/

He talked to me in Telugu.

After we reached Badrinath in the evening, a place over 10,500 feet high, situated in the valley surrounded by two mountains Nara (Man) and Narayana (God) and on the borders of India and China, the army officer took us to a guest house which was very comfortable. The Badrinath temple authority, a Nambudiri Pujari, also sent a person to look after us. The caretaker of the guest house was also a helpful person. He, however, cautioned us that, being at such a high elevation, there would be a problem of discomfort as at that great height the oxygen in the air was much less. They wanted us to move slowly and not to exert ourselves, as otherwise we would have problem in breathing normally. If we took precautions, we would adapt ourselves to the environment. I did feel some discomfort in the night because I had closed all the outside windows. When I narrated this to the caretaker, he said that I should have kept the windows open. Next morning we attended the *puja* at the temple. The temple contains the famous Narasimha Saligram installed by Shankaracharya. This is where the *puja* is performed. Even when we wore thick socks, going round with them without shoes or chappals made our feet very cold. When we went to the temple we met a General of the Army in *mufti* along with his wife. No one knew of his position, though we were told about him. He and his wife sat on one side, myself, my wife and Suverna sat on the other side. There was hardly room for any one to move about or come near for the *darshan* of the *lingam.* While the was performing the *puja*, opposite to us at some distance was a security officer, and we saw an army jawan with a heavy army overcoat with bare feet, and some *prashad* in his hands wanting to get near the *lingam* to offer them. The *pujari* however, finding there was no place for him to come near, asked the jawan to wait. At this the *jawan* took umbrage at the manner he was treated and began to say that he like all human beings had come to worship God who is every one's God, without any one being high or low. He further said, 'We as soldiers of the country are even giving our lives'. Turning to the *pujari* he said, 'You are preventing me from having *darshan* and offering the *prashad* to god'. At this the general about whom the *jawan* was not aware asked the *pujari* to let him come. I also joined him in asking the *pujari* to permit him. When the *jawan* was allowed, he offered the *prashad* and began chanting prayers with great devotion. When he finished he left. We were greatly impressed by his devotion, his forthrightness and frankness. After the *darshan* and *puja*, I went and had a dip in Tapitha Kund into which hot water springs flow (said to be of sulphur). It was exhilarating, and said to be very good for the health and the sldn. In the evening we were invited

over by the Army Chief in charge of Badrinath centre. He had us taken to the border between India and China which was only a few kilometres up the hills, from where we could notice our border along with built up posts. We were told that our men in these quarters were provided with all amenities, goods and shelter but once the snow falls this border area could not be contacted except by the latest electronic communication. Our men at the border have to stay there for nearly six months till the snows melt in June or July. After our visit we were invited to dinner at the Army Mess which was very enjoyable. We were thankful to our host for his warm hospitality and kindness. The next morning we set out on our return journey. We reached Joshi Math where we saw the Junior Shankaracharya performing *puja.* While performing the *puja* with his *tridanda* the Shankaracharya's personality was awe-inspiring. We were all greatly impressed. After the *puja* we offered our warm homage to the Shankaracharya, and when Suverna in her distress touched his feet he blessed her, putting his hand on her head, a rather exceptional gesture of kindness. On our way back from Joshi Math, we halted for a while at Sivananda Ashram where we had *darshan* of Swami Chidananda. When we reached Hard war we were told that Maa Anandamayee was there and many people were going to see her. We had heard a lot about her and also that Indira Gandhi the Prime Minister was a great devotee of hers. When we went there, no one knew who we were. While standing in front she saw us and on our doing pranamams she called me near, and blessed me by putting her hand on my head. My wife and Suverna were very happy. After this we returned to Delhi. All this journey took us about a week, actually nine days from Friday evening to Sunday evening the next week. We were happy that Suverna had recovered fully and went back to look after her affairs and her four children, two sons and two daughters, all charming and well brought up.

After the Diwali vacation, we started hearing the nine-judge bench case, which arose out of St.Xavier's College Society and the St.Xavier's College impugning the validity of the Gujarat University (Amendment) Act, 1972 (hereinafter called the Act), principally on the ground that the Act violated Article 30, Section 33A(1)(A) of the Act which provided for the Constitution of the Governing Body and Selection Committee, Sections 40 and 41 which converted affiliated colleges into constituent colleges, and Sections 51A and 52A which provided for the dismissal, removal and termination of the services of members of the staff of colleges and the reference of disputes to Arbitration. The questions that arose in the case were (a) Whether rights conferred on religious and linguistic minorities

by Article 30(1) of the Constitution were conferred for the purpose of preservation of language, script or culture of the said minorities for the purposes set out in Article 29(1) or whether those rights were extended also to establishing educational institutions imparting general secular education? (b) Whether the grant, recognition of affiliation of an educational institution to which Article 30(1) applied could be made dependent on the religious and linguistic n#inorities accepting conditions which would involve the surrender by such minorities of the rights conferred on them by Article 30(1). (c) Whether the right to establish and administer educational institutions carried with it a right to grant-in-aid and/or recognition and/or affiliation.

These questions were not new. They were the subject as I said in my judgment along with Alagiriswami J., of an unbroken line of the judgments of the Supreme Court. The reason for the case coming up before a larger bench was that when it first came up before a Constitution Bench, counsel for the teachers' association, who were interveners, referred to the Court, the opinion expressed by the former Chief Justice of India, Dr P. B. Gajendragadkar in his Tagore Law Lectures on the *Indian Parliament and Fundamental Rights* that the decisions of the Supreme Court on Articles 29 and 30 required reconsideration. At page 57 of his lecture he observed: 'If this view is not reconsidered and colleges started all over the country by societies consisting of members belonging to religious or linguistic minorities in different regions begin to claim the protection of Article 30(1), it would introduce confusion and chaos in the administration of University life. Indeed, when the Supreme Court considered this matter, it does not appear that all the consequences, which would flow from the view which the Supreme Court was taking in those cases, were properly brought to the notice of the Court; otherwise, I have no doubt that the Supreme Court would have issued notices to different States and through them (to) all the Universities in India to appear and assist the Court in dealing with issues of such vital importance to the University life as a whole.'

On a consideration of this submission, the Court directed the case to be placed before a nine-judge bench with the following order: 'Upon being mentioned by Mr M. K. Ramamurthy and upon hearing the counsel for all parties, the Court referred these writ petitions to a larger bench. The court directed that notice of these matters be issued to the Advocates-General of all the States, the Attorney General of India as well as the Union of India. The Court further directed that public notice be also issued to the minority institutions to enter appearance if so

advised, and that the said notice will be by advertisement by the Registrar of this court in all the English editions of the *Statesman,* the *Times of India* and the *Hindu* as well as the *Mail* (Madras Edition) at the expense of the State. Application for amendment of the writ petitions filed in court was granted. The All India University Teachers' Association will also be heard if they enter appearance. Although the petitioners did not impugn the validity of Section 33A(l)(b) (which provided for recruitment of the principal and the teaching staff of colleges) some of the interveners impugned the validity of that section also'.

The judgments of the court were of (1) the CJ. and Palekar J., (2) myself and Alagiriswami J., (3) Khanna J., (4) Mathew and Chandrachud JJ., (5) Baig and Dwivedi JJ. The judgments of all the above-mentioned colleagues are from pages 741 to 853 (112 pages). The result of the above judgments is set out in the order of the Court which is as follows: 'By majority, Sections 33A, 40, 41, 51A(l)(b), 51A(2)(b) and 52A of Gujarat University Act, 1949 as amended do not apply to institutions established and administered by linguistic and religious minorities. All parties will pay and bear their own costs.'

In this case, the Chief Justice Ray and Palekar J., after reviewing the earlier case law, held that the provisions in Sections 40,41,33A(l)(b), 51A and 52A cannot be applied to minority institutions and that these provisions violate the fundamental rights of the minority institutions. Ray CJ. further observed and held, 'The ultimate goal of a minority institution imparting general secular education is advancement of learning. This court has consistently held that it is not only permissible but also desirable to regulate everything in educational and academic matters for achieving excellence and uniformity in standards of education. In the field of administration it is not reasonable to claim that minority institutions will have complete autonomy. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institution. The right of a minority to administer its educational institution involves, as part of it, a correlative duty of good administration. The teachers and the taught form a world of their own where everybody is a votary of learning. They should not be made to know any distinction. Their harmony rests on dedicated and disciplined pursuit of learning. The areas of administration of minorities should be adjusted to concentrate on making learning most excellent. That is possible only when all institutions follow the motto that the institutions are places for worship of learning by the students and the teachers together irrespective of any denomination and

distinction.’ While speaking for myself and Alagiriswami J., I said: ‘The contentions raised before us on the scope and ambit of Articles 29(1) and 30(1) are not new but have been earlier urged and decided by this Court. The attempt on behalf of the State of Gujarat has been to once again raise the same crucial issues which go to the root of the rights conferred on the minorities to establish educational institutions of their choice and whether the State could treat the majority and minority educational institutions equally, an issue upon which this court has pronounced in no uncertain terms on earlier occasions. We agree with the judgment of Hon'ble Chief Justice just pronounced and with his conclusions that Sections 40, 41, 33(A)(1)(a), 33A(l)(b), 51A and 52A of the Act violate the fundamental rights of minorities and cannot, therefore, apply to the institutions established and administered by them. We would not ordinarily have found it necessary to write a separate opinion when the same thing has to be said as has been said so tersely by him, but in trying to re-state what has already been said, the impression is sometimes created that something new is being stated or some departure from the principles already adumbrated is being made. In order to avoid giving scope to any such contention being raised, we would merely refer to some earlier provisions already held to violate the fundamental rights of minorities guaranteed under Article 30(1) which are analogous to the impugned provisions in the view this Court has already taken, can be held to be violative in their application to the minority educational institutions. The reason for this separate opinion, however, is not so much to point out the invalidity of the impugned provisions which the Hon’ble Chief Justice has held to be inapplicable to the minority institutions but to examine the question as to what extent the right conferred by Article 30(1) would include within it the right of the minorities to claim affiliation for or recognition to educational institutions established by them.’

Das CJ. observed in the Kerala Education Bill case that the education code now in operation for ascertaining the effect of the impugned provisions on the existing state of affairs of unrecognised schools: that those that are studying at schools are not permitted to avail themselves of the opportunities for higher education in the Universities and are not eligible for entering the public services, results in ‘the right to establish educational institutions of their choice, to mean the right to establish real institutions which will effectively serve the needs of their community and the scholars, who resort to their educational institutions.’ After referring to this we said that, The right under Article 30 cannot be exercised *in vacuo.* Nor would it be right to refer affiliation or recognition as

privileges granted by the State. In a democratic system of Government with emphasis on education and enlightenment of its citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the

minority institutions without which the right will be a mere husk. This court has so far consistently struck down all attempts to make affiliation or recognition on terms tantamount to surrender of its rights under Article 30(1) as abridging them can be no meaningful exercise of the right under Article 30(1), the affiliation to be given should be consistent with that right, nor can it indirectly try to achieve what it cannot directly do.'

If the right of recognition is not a fundamental right, the logical result of this postulate would be that the state need not recognise schools except on general terms open to all institutions. But if recognition by a state is limited, insofar as minority institutions are concerned, under the guise of exercising this power, it cannot prescribe conditions which will make inroads and take away the right guaranteed under Article 30(1). If so, there is no meaning in saying that the right to recognise vis-a-vis minority institutions is not a fundamental right. This is one conclusion that can possibly be derived from the above observations of Das CJ. The second conclusion which is possible is that these observations will have to be confined to the provisions of law regarding the validity of which the opinion of the court was sought. In that case, the bill had provided for giving recognition to schools for preparing students for the examinations conducted by the Board, and in so providing it had imposed conditions which the court construed as tantamount to the minority institutions being required to surrender or denying them the right under Article 30(1). The court was not concerned with a law which did not deal with the question of affiliation or recognition at all or where the teaching was confined only to state managed and maintained schools. The obser-vations of Das CJ. cannot therefore, strictly speaking, apply to this factual situation. When it is so read, they cannot be held to have laid down that the State must provide for giving recognition at least to the minority institutions or accord recognition subject to such conditions as would in truth and in effect not amount to an infringement of their right under Article 30(1). In other words, where the law does not provide for giving recognition or affiliation to any educational institution irrespective of whether it is a majority or a minority institution, can the minority institution claim recognition on the grounds that without

recognition or affiliation the educational institution established by them cannot fulfil the real objects of their choice and the minorities cannot effectively exercise their rights under Article 30(1)? If the logical answer flowing from the observation is that it cannot, then the question would arise as to what is the purpose which Clause (1) of Article 30 serves? The only purpose that the fundamental right under Article 30(1) would serve, would in that case be that minorities may establish their institutions, lay down their own syllabi, provide instruction in the subjects of their choice, conduct examinations and award degrees or diplomas. Such institutions have the right to seek recognition for their degrees and diplomas and ask for aid where aid is given to other educational institutions giving a like education on the basis of the excellence achieved by them. The State is bound to give recognition to their qualifications and to the institutions and they cannot be discriminated except on the ground of want of excellence in their educational standards so far as recognition of degrees or educational qualifications is concerned and want of efficient management so far as aid is concerned.

The second aspect is that which arose in the *DAV College vs. State of Punjab* (1971), 2 SCC 269 where the state had made the compulsory affiliation of minority educational institutions to the university which had prescribed a medium of instruction other than the language of the minority. Holding that no compulsory affiliation can be insisted upon which offends the right guaranteed under Article 29(1) and 30(1), where this compulsory affiliation is found it will leave such institutions, as cannot comply with a *via media*, leaving them free to get affiliated to a University in that linguistic state which provides facility for the language and script of the minorities. In support of this facility which the minorities can adopt the unanimous resolution of the Parliament dated 19 September 1956 on the safeguards proposed for the linguistic minorities (Vide IV of States Reorganisation Report recommending that the concerned states should provide necessary facilities to safeguard minority rights by amending their university statutes). Having referred to this aspect, I asked, ‘but what would happen if the educational institutions of a minority find it inconvenient or impossible to secure such a recognition or affiliation even outside the state in which they are established?’In such circumstances, education including university education being a state subject and the legislative power of the state also being subject to Article 29(1) and Article 30(1), minorities able to establish an educational institution can insist on recognition, where affiliation is not provided for by the University Acts, to the educational qualifications awarded by

them, whether degrees, diplomas or other certificates, which conform to the educational standards prescribed by the state for the recognition of such degrees, diplomas and other certificates.

The distinguished advocate and author Shri H. M. Seervai, in his *Constitutional Law of India*, third edition, Vol. 1 while agreeing with my reason for writing a separate judgment, commented on Dr Gajendragadkar's view in his note 18 at page 963 as under: The right to establish and administer educational institutions which is guaranteed by Article 30(1) is, in substance, a right to safeguard the languages, script and culture or religion. A minority may *start* educational institutions of its own choice *solely* or *mainly* with the object of preserving its own language, script and culture' op.cit. *Tagore Law Lectures*, at p.55 (italics supplied).This was rejected it is submitted rightly by all the judges. It is unnecessary to consider Dr Gajendra- gadkar's views in detail, beyond saying, first, that they do not proceed on an analysis of the terms of Article 29 and 30, but on what he believed to be the intention of the framers of our Constitution which he then read into Article 29 and 20, a procedure which is contrary to the settled principles of construction. Secondly the fundamental rights which he concedes to minorities, is devoid of practical content. His language shows awareness of this: It is 'conceivable' that a minority 'may start' the educational institutions he describes; but in the India of 1947-50 no one would have formulated fundamental rights to protect the right to establish educational institutions resembling antiquated museum pieces. The existence of a large number of schools and colleges run by religious minorities which imparted general 'secular' education, with or without compulsory 'scripture' classes was well known to the framers of our Constitution: as also the fact that those schools received recognition and grants from the State and those colleges were affiliated to universities. The provisions of Article 28(3) against requiring a person attending any educational institution, 'recognized by the State or receiving aid from State funds to take part in any religious instruc-tion or religious worship' without his or her guardian's consent; the provision of Article 29(2) that no citizen shall be denied admission to educational institutions maintained or aided' by the State on the grounds of religion, race, caste, language or any of them; the special provision made by Article 337 for grants to Anglo-Indian educational institutions (which are minority institutions) on condition that not less than forty per cent of the annual admissions were made available to communities other than Anglo-Indian community conclusively show that it is the rights of these and similar minority institutions which the framers protected and not the minority

institutions which, according to Dr Gajendragakar, may ‘conceivably’ be established. And finally, where special rights are conferred on minorities alone, it is obvious that minorities and majorities are treated differently, and a plea for total uniformity between the minorities and the majority contradicts the very concept of special minority rights.

The nine-judge bench in the *St.Xavier’s College* case also unanimously decided (except for Dwivedi J. who partly agreed) that the contentions raised in the earlier decisions were once again raised in this case. The opportunity given to all those concerned with the contentions that all the states and central government organisations, universities and other educational institutions as earlier mentioned, were directly invited to represent in the case by a notification issued at the government’s expense. On hearing all those that were represented the decision has finally set at rest the scope and ambit of Articles 28,29 and 30.

Out of the three questions referred to earlier which fell for consideration by the nine-judge bench, on the first question, all of us held that the right of religious and linguistic institutions designed solely or mainly to preserve the language, script and culture of such minorities, also extended to establishing institutions imparting general ‘secular’ education. Seervai points out that the analysis does not break any new ground on the interpretation of Articles 29 and 30. As to affiliation or recognition the two questions which arise are (i) can recognition or affiliation be granted on terms involving a surrender of the rights conferred by Article 30(1)? (ii) Do the rights conferred by Article 30(1) include the right to recognition or affiliation and what are the consequences involved in applying for and obtaining affiliation?

On (i) above all of us were unanimous and we did not go beyond Das CJ’s reasons given in the Kerala Education Bill case. On aspect (ii) there was a difference of view though by 7:2, Baig and Dwivedi, JJ. who dissented from each other. In the Kerala Education Bill case Das CJ., as already pointed out, had said that the right to aid or recognition was not a fundamental right, but the aid or recognition cannot be offered on conditions which would involve a surrender of these rights. As Seervai points out ‘these observations have been emphatically reasserted by all the nine judges. But the implication of the observations have not been drawn out except by Reddy J. in the present case.” He thereafter dealt with four propositions arising from the said observations at pages 967 to 968. With respect to these Seervai comments (pp 968-69) ‘When Das, C.J. said that there was no fundamental right to aid or recognition, he was considering the

effect of Article 30(1) not only in the situation before him but the effect of Article 30(1) in other situations as well. His observations will be better understood if we inquire in respect each situation, whether minority institutions have a right under Article 30(1) to aid and/or recognition and/or affiliation ("aid, etc."), in the sense that without aid, etc. the rights conferred by Article 30(1) would not be real and effective rights'. It was submitted that in the 1st and 2nd situations the right to aid, etc. is necessarily implied because in those situations there is no meaning in saying that though the right to aid, etc. is not a fundamental right, nevertheless, aid etc. cannot be offered on terms which involve a surrender of the rights under Article 30(1). The *Kerala Opinion* shows that in the first and second situations, aid etc. cannot be refused which means that there is a right to aid etc. What is the scope of that right has to be considered separately. In the third situation the right to aid etc. is not necessarily implied, since the rights conferred by Article 30(1) can be effectively exercised without aid etc. The fourth situation is more complicated. If the Universities in a state are teaching, and not affiliating universities, then the law of that state must not prevent a minority college from seeking affiliation with a university outside the state as was held by the Supreme Court with reference to an affiliating university. However, if such affiliation is impossible or inconvenient to secure, what is the fundamental right guaranteed by Article 30(1)? It is submitted that in a creative judgment which breaks new ground, Reddy J. has given the correct answer.'

'The only purpose that the fundamental right under Article 30(1) would serve would in that case be that minorities may establish their institutions, lay down their own syllabi, provide instruction in the subjects of their choice, conduct examinations and award degrees or diplomas. Such institutions have the right to seek recognition to their degrees and diplomas and ask for aid where aid is given to other educational institutions giving a like education on the basis of the excellence achieved by them. The State is bound to give recognition to their qualifications and to the institutions and they cannot be discriminated except on the ground of want of excellence in their educational standards so far as recognition of degrees or educational qualifications is concerned and want of efficient management so far as aid is concerned.' (1974 1 SCC 717 at 762).

Again Seervai stated: 'The answer given by Reddy, J. is further supported by the consideration that otherwise as regards university education, Article 30(1) can be rendered a dead letter by the simple expedient of converting affiliating

universities into teaching universities. In the *St.Xavier's College* case, eight out of nine judges held that this cannot be done.

Applying the principle laid down in St.Xavier's College case in the light of the earlier decisions eight out of nine judges held sections 40 and 41 which converted affiliated colleges to constituent colleges violated Article 30(1) and these sections could not have any compulsory application to colleges established and administered by religious, linguistic minorities. Again it was stated that the provisions of Section 33(l)(c) were similar to those contained in Sections 48 and 49 of the Kerala University Act, 1969 and statute 2(l)(a) of the Guru Nanak University Statutes which the Supreme Court had held vio-lative of Article 30(1). Eight out of nine judges held that Section33A(l)(a) violated Article 30(1) and could not be applied to minorities institutions. Approving the decisions of (a) The Mother Provincial's Case; (b) Patro's case; (c) Proost's case; (d) D.A.V. College case, Baig J. dissented. Section 51-A(l)(a) and (2)(a) were held to be violative of Article 30(1). Section 52A which dealt with disputes between academics and management to be referred to Arbitration were held by seven out of nine judges to violate Article 30(1) and could not be applied to minority institutions. Ray CJ. said 'These references to Arbitration will introduce an area of litigious controversy inside the educational institution. The atmosphere of the institution will be vitiated by such proceedings. The governing body has its domestic jurisdiction. The jurisdiction will be displaced. A new jurisdiction will be created in administration.' Myself, Khanna and Mathew JJ. expressed similar views.

Soon after the judgement, my wife and I went to Hyderabad to spend our summer vacation. While we were there I thought that since I had only six months for retirement I could take a month's leave to see places of interest in Uttar Pradesh, Bihar, Bengal, Assam, Nagaland. I also thought the best way to do this was to get a Matador van with a diesel engine which would make the long journey economical. The purchase of a Matador van before my retirement on 23 January 1975 would also facilitate our returning to Hyderabad by road visiting places of interest on the way. In order to carry out this plan I bought a seven seater matador diesel van for about Rs. 19,000. This was brought to Delhi by road by a road transport driver whom I had known for a long time. He volunteered to take leave and bring it. As it was a new car I had it checked up and serviced. I got our official driver Appala Swami to take care of the car and get used to it. I planned a tour as stated above in October.

While I was spending the summer vacation in Hyderabad, Justice Obul Reddy, Chief Justice phoned me asking me if I could talk to Shri A. Raghuvir, a Government pleader, about whether he would agree to his name being proposed as a Judge of the High Court. It appears that during the time of Shri Narasimham's Chief Justiceship he had attempted to propose for judgeship persons who were considered to be competent but had not earned a good reputation. Raghuvir's name had been suggested, but he refused to be considered. Hence Obul Reddy was anxious not to be directly involved and he wanted me to sound him first before he considered his name. I called Raghuvir and enquired what his response would be if his name was suggested. He was frank enough to confess that during the time of Narsimham's Chief Justiceship he had brought down the reputation of the court and hence when that Chief Justice had suggested his name he had refused. Even now he would rather not be considered. I said that Obul Reddy's Chief Justiceship had created confidence and any appointments proposed by him would be considered well-deserved. In any case it was for him to decide. This opportunity might not come again, or when he was inclined, he might not have a chance, or if he had one he would be very junior to others who had already been appointed. After a little hesitation he agreed. I communicated this to Obul Reddy. Some time after Raghuvir left, Obul Reddy phoned me. He said he had forgotten to mention that Raghuvir's name would be the second of the two names he was proposing. The first name would be that of Shiv Shankar for a permanent post, and Raghuvir's would be for the post of an Additional Judge. The reason was that during Chief Justice Kumarayya's tenure, Shiv Shankar's name was sent up but apparently Sikri did not agree as he was young and not a senior advocate and felt that his name could be considered later. I then phoned Raghuvir and conveyed what Obul Reddy was proposing. Raghuvir was fair enough to say since he had agreed it did not matter to which post he was being proposed. On my conveying what Raghuvir said his name was sent along with that of Shiv Shankar's.

I had known Shri Shiv Shankar as a practising lawyer. He was doing well and was appearing in important cases and before Justice Kuma- rayya who was sitting on the original side in cases dealing with the Salarjung Estate, and cases transferred from the city civil court to the original side of the High Court. These involved suits over one lakh, particularly cases filed by banks to receive amounts due from the debtors. Shri Shiv Shankar also used to call on me at Delhi, whenever he came over. When he came to see me one evening after I came back from the Court, I asked him whether the proposals sent by Chief Justice Obul

Reddy had been approved. He said, ‘Yes’. Then I asked him if he had sent in his health and age certificate. He replied that since his name was approved for appointment as an additional judge no such certificate was required. I said, ‘How is that? Your name was sent for a permanent post. How has it been approved for an additional judge’s post?’ He said he did not know. I told him, ‘Tomorrow morning when I meet Chief Justice Ray in our walk I will ask him why the proposal for your appointment as a permanent judge was approved by him for an appointment as an additional judge?’ I asked him to come to see me in the morning between 8.00 and 9.0 a.m. When I asked Ray about this the next day, He said he had not changed it but that the proposal itself had come to him from the Law Ministry for appointment of Raghuvir as permanent judge and Shiv Shankar as Additional Judge. He said, ‘perhaps it is because both names have been sent at the same time, the older in age and enrolment will be given seniority. He asked me to assure Shiv Shankar that there would be no difficulty in his being made permanent as soon as the proposal for making the additional post permanent was approved. I was unable to convey this information to Shiv Shankar because he had not as promised called on me. The appointments were made and Shiv Shankar was sworn in as Additional Judge of the Andhra Pradesh High Court. He did not meet me after that till I retired in January, 1975. When I had an opportunity to meet him at some function he tried to avoid me. After this I came to know that he thought that I had manoeuvred his being appointed as an additional judge and Raghuvir as permanent judge. My conscience however was clear and Shri Obul Reddy CJ. also knew about this. I hoped that one day this misunderstanding would be cleared up. It appears that it was after he became a Law Minister in Indira Gandhi’s Ministry, that he came to know that I had nothing to do with his appointment as an Additional Judge, which he incidentally gave up after some time, for whatever reason.

My brother, sister-in-law, my sister, daughter and son-in-law also wished to join me and my wife on our visit to the North-Eastern states. So I applied for leave of one month in October. The Secretary to Government of India, External Affairs, saw that I was also visiting Sikkim, and as the ruler of Sikkim was not on good terms with the Government of India he considered that a visit of a person of my status would be exploited by the Prince, and requested me to drop my visit there. I informed him that I was not intending to visit the Prince, but he said, ‘You may not want to visit him, but he will visit you, if he knows of your visit. He will then give a great deal of publicity and will exploit his meeting with you.’ In view of this I cancelled my visit to Sikkim.

After we had made our travel plans, we had to postpone it because we received the news that my son-in-law's father had had a heart attack in Warangal and was in the hospital. Immediately my daughter and son-in-law took a train to Kazipet (Warangal) to visit him. Since the heart attack was serious I cancelled my leave and applied for a month's leave from 28 October to 23 November. My wife and I went to Warangal by train. I asked my brother to continue his tour from Delhi as planned and told him that we would meet him in Guwahati on 6 November where we would fly via Calcutta. From there we would join them on our journey to Assam, Nagaland and return via the places we had planned earlier, that is, West Bengal, Bihar, Uttar Pradesh and back to Delhi.

As the Registrar of the Supreme Court had informed all the High Courts on our route, and they had in turn informed the district Judges, sub-judges and magistrates we were received with regard and affection on the route. I had personally written to the Chief Justices of the Allahabad, Calcutta, Guwahati and Patna High Courts as well as the head of the Lucknow Bench. They in turn assured me of their help and assistance. For our trip to Kaziranga, a protected game sanctuary, Nagaland, and other inaccessible places which we could not have toured in our van, the Government of Assam and Nagaland provided us with jeeps and escorts to take us to the places on our tour and ensured our comfort.

At Guwahati I met Chief Justice M. C. Pathak, whose Registrar, B.Goswami had made excellent arrangements. Similarly we met Shri M. H. Khan, Secretary Law, M. C. Meran, Deputy Secretary Protocol, Hon'ble Mr Huska Sumi, Minister; Mr Vamuzo, Minister, PWD, Mr T. N. Agrami, Planning Minister of Government of Nagaland at Kohima, and Law Minister, Government of Manipur, Imphal. All were hospitable and helpful. At Kaziranga sanctuary the authorities had arranged an elephant with a *howdah* which was able to seat five of us to take us round to see wild animals. The game sanctuary had high grass and only by sitting on an elephant could we see any animals. One of the animals in Assam which many would like to see and is not common in other game sanctuaries is the rhinoceros which has one horn. Though we saw some wild buffaloes, it took us quite a while to see a rhinoceros and that too not a herd but only one which was wandering. It was quite an experience.

The Chief Minister of Nagaland was disappointed that we spent only a day at Kohima. As I was the first Justice of the Supreme Court to visit the place, he expected me to spend a couple of days in Kohima. I told him that it was not my

fault as the Government of India having regard to disturbed conditions had given us only 24 hours. In any case I assured him that on our way back from Manipur we would spend a little time. He entertained us to a dinner and presented us with spears which I believe is their traditional way of receiving guests. Before we left for Manipur he and his Law Minister said, 'If the people living in these areas want to have recourse to the High Court they have to go to Guwahati. It is very inconvenient and expensive for them to go all the Way to Guwahati. If a Bench of the High Court is established here in Kohima, the Nagaland Government will be willing to bear the expenses incurred for establishing a Bench. He wanted me do something about it. I said I would speak to the Chief Justice of India and would try and persuade him, but this would also depend on the Government of India. The Nagas, we found, were tall strong and warrior like. Through the intervention of common friends, some underground Nagas wanted to see me. I was a bit concerned but friends there assured me that they only wanted to convey a message to the Home Minister Shri Brahmananda Reddy. Perhaps they thought that because both of us were Reddys, my intervention would be helpful. When I met them they wanted to know why the Government of India were reluctant to meet the representatives of Nagas. If they did, they could discuss matters and could come to an amicable solution of their problems. I promised to convey this message to the Home Minister. On the way to Manipur when we visited the Hills abode of the Nagas they entertained us. We needed an interpreter to have their speech translated to us. They drink rice wine and when they offered a toast to us, we also pretended to drink by merely putting it to our lips.

At Manipur, Imphal, a place which the Azad Fouj of Subhash Chandra Bose had visited, the Law Minister, Government of Manipur arranged a polo match which they said was of their indigenous style. This was followed by the British with their changes. The Law Minister also spoke about a High Court Bench being established. He said even if it was established at Kohima it would be helpful. I may here mention that the people of Manipur are the followers of Lord Krishna. On our way back, we also visited Darjeeling and Kalimpong where I spent an hour with the former Chief Justice S. R. Das. At Darjeeling, we were able to see the sunrise and the first reflections of light on the peaks of Kanchenjunga. Though we had to get up at 3 a.m. and go to the Tiger Hill, our inconvenience was worthwhile because we were lucky enough to see the phenomenon of changing colours and hues as the first rays of sunlight emerged in the sky. Many people who had been going there before us were not so lucky because just at the time of sunrise there would be mist and clouds. We met Mr M. R. Reddy at

Guwahati and had lunch and dinner with him. He was very hospitable and helpful and because of him we were able to go to Darjeeling, where we were looked after well by the Railway people. On our way back, we visited Sitamarhi where Sita was supposed to have been born, Kushinagar where Gautama Buddha attained his Pari Nirvan and Ajodhya. At Lucknow we called on the Governor who, though very busy, was able to find some time for us. He had been very active but I told him not to strain himself too much as he had got long enough time to go around. At Lucknow we stayed in the Court itself where there are two suites of rooms for the Chief Justice and other visiting judges from Allahabad who come now and then to constitute benches for disposal of the work within that jurisdiction. There were seven permanent judges and they were good enough to have us to tea in the evening.

The Chief Justice of Allahabad, Mr K. B. Asthan, who had taken over on Diwali day wrote welcoming me to Lucknow, as he missed welcoming me on my visit to Allahabad due to my change in the programme on my way to Guwahati. After visiting all the places of interest we returned to Delhi on 22nd November. Immediately I wrote to all those who were of assistance and help. I also wrote and thanked the Chief Justices of Allahabad, Patna, Calcutta and Guwhati for directing their subordinate judicial officers, Registrars, etc. to look after us on our tour.

After coming back, I contacted Shri Brahmananda Reddy, Home Minister and informed him of the conversation I had had with the underground Nagas, and their grouse that the ministers of the Government of India had not visited their areas. If they had done so the Nagas could have discussed their problems with them. Thereafter, Brahmananda Reddy did visit that area and gave con- cilatory speeches. His visit and his speeches led to the problems being sorted out.

About a fortnight after my return to Delhi we had another tragedy in the sudden death of our colleague Dwivedi on 8 December. Dwivedi was a good friend. I was lucky to have had his affection and regard. He always believed, in expressing his independent opinion in important cases. I had no problem sitting with him. His loss left six of the thirteen who took part in Keshavananda case and only two including me, who were party to the basic structure issue, which the seven of us in the majority had propounded. Of the two remaining, after my retirement on 23 January 1975, only Khanna would be left.

About this time I was also pondering over taking to some avocation that would

keep me busy, because sitting idle was unthinkable. One of these avocations was to initiate a sort of one-man psychological counselling service — a 'troubled mind clinic' where persons could seek advice on the problems worrying them or unburden themselves of their troubles. The other was to prepare a biographical account of the memorable and stirring events I had witnessed, the experience I had during my student days in India, abroad and in the course of my judicial career spreading over four decades. Even before my retirement I planned to travel back home to Hyderabad leisurely by road with my wife and some members of my family and friends who wanted to visit us and travel back with us. I was to leave on 25 January 1975, with my family in a Matador van touching Gwalior, Khajuraho, Jabalpur, Nagpur and Adilabad en route. The Madhya Pradesh Chief Justice, at Jabalpur, was good enough to invite me officially for a reception in my honour. There were similar plans at the other places I was to pass through. As I was thinking of matters relating to my occupation some friends enquired if I would accept the Vice Chancellorship of Osmania University with which I had had a long connection, as Dean of the Law Faculty, as a member of its Syndicate, and as acting Vice Chancellor during the period when Shri D. S. Reddy was on leave. Though I indicated that I would not be averse, I nonetheless told them that I would not consider any such proposal before I actually retired.

After my retirement on 22 January 1975 in the evening members of the Bar gave a farewell tea. Earlier, the Chief Justice and my colleagues also gave me a farewell dinner. The senior advocate Shri Ram Reddy pressurised me to accept a dinner by him at the India International Centre, which my wife and I accepted. He had among the nearly thirty invitees, Shri Daphtary, former Attorney General of India and also a member of Rajya Sabha. At that time he was not well and in spite of it he came. In his speech he said that though the doctors advised him not to strain himself, he had come against their advice only because the dinner was to bid me farewell. I was moved by the great affection and sentiment he expressed about me, my work and the courtesy which I showed to the members of the Bar and the patient hearing I gave irrespective of the seniority of the advocates appearing before me.

My wife and I called one evening on Shri and Smt Brahmananda Reddy to bid farewell. They were very happy to receive us. We spent about an hour or so and had tea with them. During our talk Brahmananda Reddy expressed his appreciation of me as a Judge, Chief Justice and Judge of the Supreme Court.

The only remark he made was that regarding the appointment of a person whom he had opposed as that person's tenure was not well talked of. He saic£ that I had insisted on his appointment even though he was not agreeable. I told him he had also opposed the appointment of another person whom I had proposed. Though he also was appointed there was no criticism about him. So we were 50% right and 50% wrong. He laughed at this remark. My wife also appreciated greatly Smt Brahmananda Reddy's surprise gesture of presenting her with a beautiful saree. My wife and I always remember Shri and Smt Brahmananda Reddy's affection and regard towards us.

On the day of my retirement on 23 January 1975, Shri Vengal Rao, Chief Minister of Andhra Pradesh, came over to Delhi. He wanted to see me. When I called on him at the Andhra Pradesh Guest House he formally offered the post of Vice Chancellor of Osmania University. When I accepted it, he said he would be sending a message to the Governor Shri Khandubhai Desai who was at that time in Ahmedabad, to issue orders of my appointment as Vice Chancellor of Osmania University as its Chancellor, and said that I should go and take charge the next day, namely 24 January. I told him that I had planned to leave Delhi on 25 January for Hyderabad in my matador van with my relatives and friends, so I would take over, about the 1 February after I got back to Hyderabad by the end of January. He however insisted that it was urgent and I should leave on 24 morning and take charge and return the same evening. In this way I could keep to my programme. I enquired why it was so urgent. He said it was indeed urgent and any delay would cause more of the serious trouble in which it had already been involved. So I agreed, but I told him. that I would accept the offer of appointment as the Vice Chancellor but only on one rupee a month. Since the University Act fixes a remuneration, even accepting one rupee salary would ensure my being bound by the provisions of the University Act. Shri Vengal Rao said that was left to my choice.

In view of the urgency which the Chief Minister had stressed, f left for Hyderabad the next day. The flight however was delayed and instead of reaching Hyderabad in the morning I reached only at 4.0 p.m. I was taken straight to the University which I was informed was in quite an alarming situation. I was told by the Superintendent of Police who came to meet me that day there was a *lathi* charge following a procession and a counter procession, one demanding and another opposing extension of the term of the incumbent Vice Chancellor Narotham Reddy. I then understood why Shri Vengal Rao was insisting on my

taking over on the very next day. I began to have doubts as to my accepting the office in these circumstances, but what had been done had now to be carried on as best as I could.

When I contacted Narotham Reddy about my coming over to take over from him, he was good enough to agree to hand over charge and complimented me on my appointment. When I reached the VC's Lodge in the campus for the formal handover, I found the atmosphere far from the serenity one would expect in a seat of higher learning. The Lodge itself looked like a police camp. In fact, the whole campus was full of police. Besides Shri Narotham Reddy and the Registrar, the Superintendent of Police was also present at the Lodge, where the taking- over-charge memo had to be signed. The Registrar raised several silly points and also asked me how salaries were going to be paid, even before I took charge, but Shri Narotham Reddy's firm instructions prevailed and the memo was prepared and the charge was given and taken.

I requested Shri Narotham Reddy to extend his cooperation and advise me in accomplishing my new tasks. He remarked: When the government does not think I am capable, what advice I can give? I told him I was not concerned with the government but I was entitled to his advice in view of our personal relations. He consented to provide me with a detailed note on the affairs of the University. He wanted to stay in the Lodge for some time as his house had not yet been vacated. I agreed, and also told him to use the car and telephone till he left.

As the Registrar raised the question of salaries to the staff and said that there were no funds with University, I informed the Chief Minister about the situation. The Chief Minister said: 'I have instructed the Finance Secretary to do the needful and you can go back without any anxiety.' I thanked him and contacted the Finance Secretary, B. P. R.Vithal, who said that he would release a part of the block grant of the University to meet the immediate requirement of payment of salaries, etc. and that details could be attended to later. I was satisfied with these assurances. I wrote a letter to Shri D. Ramanuja Rao, a senior member of the Syndicate to look after the day-to-day affairs of the University until I returned from Delhi. This done, I left for the airport to catch the plane the same night. At the airport I had to give a piece of my mind to the Registrar of the University about his obstructionist attitude and warned him of the consequences if he did not mend himself. He regretted his conduct and assured me of his full cooperation.

I reached Delhi at 1.00 a.m. All the way I was thinking of what I had got into. From what I heard from the few who met me, the conditions at the University were really so bad that the teachers and staff felt extremely insecure. They were apprehensive of their lives in the campus. Their families were worrying whether they would even return home safely. As one staff member said, it was a daily hell for them. Anyway, now that I was in it, there seemed to be no way other than to face it with courage and fortitude. By the time I reached home it was 2.00 a.m. I slept a little and the next morning got up early to start for Hyderabad by road at 9.00 a.m. as earlier programmed.

I will not burden this narration with my travel from Delhi to Hyderabad though it would not be out of place to mention that on this journey, when we stayed at Gwalior, Jabalpur, Nagpur and even on the way passing through small towns, I was stopped by lawyers and asked to visit their courts. At Jabalpur, I received great affection and regard from the Chief Justice, Judges and Government Officers. In the evening the Chief Justice hosted a dinner for us. At Nagpur we visited Justice Vivian Bose. I also met Justice Tambe who was the head of the Nagpur Bench of the Bombay High Court. I had known him earlier. His wife and late Chief Justice R. S. Naik's wife were sisters.

We reached Hyderabad on 30 January and I started functioning as the Vice Chancellor from the next day. I have narrated about my functioning as Vice Chancellor in the book, *University I Served;* printed and published by Osmania University. After I was able to succeed in restoring the confidence of the teachers and students in the University and had successfully completed holding the postgraduate and degree examinations, Emergency was declared by Indira Gandhi on 25 June 1975. After Indira Gandhi lost in the 1977 elections she lifted the Emergency and the Janata Party took over with Morarjee Desai as Prime Minister. I was appointed by the new government to head two Commissions, one in respect of matters specified in the annexure to the Notification date 14 June, 1977 to enquire into the conduct of Shri Bansi Lai, as Chief Minister of Haryana and as Minister of Defence in the Union Cabinet. The second was regarding matters mentioned in the notification dated 9 June, 1977 concerning the taking out of 60 lakhs from State Bank of India, Parliament Street on 24 May 1971 by its Chief Cashier Ved Prakash Malhotra, including the subsequent criminal proceedings against Shri S. Nagarwala, etc. These two commissions were heard, completed and approved by the Government the first one on 23 June 1978 and the second one by 23 October 1978.1 may here state that once I accepted to head

the two commissions, I was being persuaded by the Chief Minister Shri Vengal Rao to conduct these on a part-time basis but knowing the difficulties of running a University with jurisdiction over almost nine districts of Telengana with over 100 affiliated and private colleges, and over one lakh of students, it was not possible to be a part-time Vice Chancellor. I, therefore, resigned on 31 July 1977 and left Hyderabad for Delhi on the same day to discharge my functions as the head of the Commissions, which I did without accepting any remuneration.

In the conduct of these commissions, Shri Govind Swaminathan, former Advocate General of Madras, a colleague and a friend of mine at the Bar at Madras where I was practising, was appointed as Commission's counsel. At these commissions, Indira Gandhi and her two sons Rajiv and Sanjay appeared and gave evidence. Shri Morarji Desai, the Prime Minister, Bansi Lai, Devi Lai and others also gave evidence. I even visited Bansi Lai's village Bheewandi for inspection. After the evidence and submission of the counsel, Shri Bandari for Bansilal, and Govind Swaminathan were completed I gave my reports as stated above. These reports were accepted by the Government. While Indira Gandhi did not appear before the other commissions headed by Shah and Gupta, she did not cause any trouble in my commission. Just before the elections for 1980 were held, she is reported to have said at a mammoth public meeting at Banganapally, Andhra Pradesh on 8 September, 1979 as reported in the *Deccan Chronicle* of 9 September, 1979 that "different commissions' reports against her and her family members were being brought out under pressures. Only the report of Jaganmohan Reddy was not subjected to any pressure as Mr Reddy did not yield to any pressure.' Taking advantage of this utterance by Mrs Gandhi the *India Today* in its issue of October 1-15,1979 at page 5 published the following:

"A Birthday Gift"

Retired Supreme Court Judge, Pingili Jaganmohan Reddy is likely to celebrate his 71st Birthday in January as a Member of the Lok Sabha. He is to be given a Congress I ticket from Andhra Pradesh. The party President Mrs Indira Gandhi feels that as one of the ex-judges conducting a post-emergency commission of enquiry, Reddy has been balanced and fair in probing the allegations. As a sitting Judge he has chaired such commissions twice, the Mulki Riots in Hyderabad and Communal Disturbances in Ahmedabad.

When this item as reported in a fortnightly journal was brought to my notice I was upset and wondered how the reporter of such a paper invented a story to

malign a judge who discharged his function without fear or favour as succumbing to gifts because on evidence he did not consider the ex-Prime Minister and her sons blameworthy. I immediately gave a statement on 5 October 1979 to the PTI, *The Hindu* and *Deccan Chronicle* in respect of the news item published in *India Today,* October 1-15,1979.

After referring to what was stated in the news item, I expressed the view that 'I would not ordinarily have taken notice of it, but since there are subtle implications, I wish to say that whatever may be the feelings and however unjustified the insinuation – though judges who discharge their judicial functions as an invariable rule objectively without fear or favour, would consider it improper to either expect or receive "Birthday Gifts" -1 have neither been approached by anyone from any political party; nor have I any intention of offering myself as a candidate in the ensuing elections.'

This statement was published in both the *Hindu* and the *Chronicle* of 7 October, 1979. The Managing Editor of *India Today,* Chotu Kardia by his letter of 18 October, 1979 wrote to nifeLand while referring to the news item in the issue of 1-15 October complained about, said, 'I regret that because the correspondent filing the story did not check with you, we are publishing your denial in our issue which came out at the end of the month.' An eyewash of a news item was then published in 1-15 November issue at page 3 which under the head-ing, 'No offer' referred to my statement as follows: 'My attention has been drawn to a news item titled 'A Birthday Gift'. After giving the contents of the item as published the following statement of mine was reported: 'I have neither been approached by any one from any political party, nor have I any intention of offering myself as a candidate in the ensuring elections'. What a way of covering up a reporter who without any justification or basis, indicated his resentment, of Mrs Gandhi and her sons not being found fault with, by alleging that I was being given a present. He was a reporter who knew the month of my birth, and my having headed two commissions. I am sure he also knew my being a Vice-Chancellor. Making such untenable and baseless allegations is really regrettable.

I end this book by saying that I have been happy with my work during the period I was a Judge, Chief Justice and as a Judge of the Supreme Court. My relations with the Bar and the Subordinate Judiciary have always been cordial. My colleagues and the Chief Justices who presided during my tenure were equally cordial and amiable. I may have disagreed with my colleagues in the decisions which we dealt with, but that did not affect our personal friendship and mutual

warmth. Even in the most controversial judgment in Keshavananda's case, I was able to maintain the above relationship. Not only during the tenure but subsequently too my colleagues have maintained the same relationship with me. I am deeply thankful to all among whom I functioned officially during my tenure in the judiciary and who continued to maintain a similar relationship with me ever after.

Appendix

YOUTHOSOPHY: YORKSHIRE'S MOST YOUTHFUL PILOT

P. J. Reddy—Indian by birth but decidedly European in interest—is the most youthful pilot in Yorkshire and certainly the most entertaining student at Leeds University.

Everyone knows him. You first say: 'Where's Reddy?' His unspoken philosophy is a sound one. 'Squeeze the most out of life while you are young.' Hence he flies an aeroplane. He drives an attractive sports car known to the whole varsity as 'Padmini' which means 'Lady of the Lotus'. He is a brilliant athlete and a crack hockey player. He is a brilliant debater and an interesting public speaker. And—let's not forget this—he studies law and commerce. It is Reddy who was one of the leading figures behind the Leeds University Flying Club, the recently formed organisation designed to stimulate the interest of young people both in the theoretical side of flying and in the more practical side—by securing preferential rates at Yeadon aero-centre.

Before he was 22 Reddy had qualified for a pilot's licence and was sampling the thrills of the air. He finds it splendid fun but more than that, says he, "I enjoy flying for its own sake but I do believe that as far as youth is concerned it has more than a recreational importance. The more that modern youth can learn about aviation the better. It is the transport method of the future and I am convinced that it will play a valuable part in the development of my country.'

Yorkshire Evening Post, 6 April 1933